the barrister

#108 ESSENTIAL READING FOR BARRISTERS
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The gender pay gap: Why does it matter and what can we do about it?

Equal Pay Act 1970

It has been 50 years since the Equal Pay Act 1970 came into force (29th December 1975). It is "An Act to prevent discrimination, as regards terms and conditions of employment between men and women" so one might hope that by this time there would be no gender pay gap remaining, especially within the legal profession which by its very nature should be upholding equality and justice.

Gender Pay Gap at the Bar

It is therefore dismal to read the Bar Standards Board report on Barristers' income by gender and ethnicity published on 1st July 2025 following up a previous research report published in February 2022.

Louise McCullough, Barrister, Deka Chambers

The 2025 report shows that female barristers and barristers from minority ethnic backgrounds are likely to earn less than White and male barristers respectively. This holds true when looking at employed barristers, self-employed barristers, KCs and barristers based inside and outside London "Even when comparing barristers with the same main area of practice and seniority by year of Call, female barristers and barristers from minority ethnic backgrounds still earn less on average than equivalent male and White barristers".

Overall, average incomes are 57% of those of men, whereas average income for barristers from minority ethnic backgrounds are 74% of those of White barristers.

Female barristers from minority ethnic backgrounds (ie intersectionality) are

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The EU AI Act and the UK Bar: Cross-Border Implications and Readiness for August 2026

The European Union's Artificial Intelligence Act, 2024[1] (*"EU AI Act"*) marks a turning point in the regulation of artificial intelligence. It is the first legislative instrument to attempt, in a single binding framework, to regulate AI comprehensively and across sectors. When its core provisions come into force in August 2026, its effects will not be confined to the European Union. For the UK Bar, the question is no longer whether the Act is relevant, but how its reach will be encountered in practice. Barristers advising on matters with a European dimension will increasingly find that the Act shapes the regulatory environment in which their clients operate. Even in the absence of direct statutory force in the United Kingdom, the Act's extraterritorial design means that UK practitioners may fall within its scope whenever an instruction, a proceeding, or an AI-enabled tool engages the EU legal order.

The structure of the Act is, on its face, straightforward. AI systems are classified by reference to risk—ranging from prohibited uses to high-, limited-, and minimal-risk applications—with regulatory obligations intensifying accordingly. Systems deployed in areas such as recruitment, credit assessment, law enforcement, and access to justice are designated as high-risk and are subject to exacting requirements relating to transparency, human oversight, and post-market monitoring (EU AI Act, 2024, Arts. 5–6, 8–29). For the UK Bar, however, the principal difficulty lies not in the taxonomy itself, but in the Act's extraterritorial operation. In a manner familiar from the GDPR, the regime is not confined

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The Bar Standards Board Introduces New Data Collection Rules On First-Tier Complaints Handling and Reporting

The Legal Services Board (LSB) has approved the changes to the Bar Standards Board (BSB) Handbook rules, which will pave the way for new data collection and updated complaints handling rules. These changes reflect the LSB's statutory requirements and guidance issued in May 2024 on complaints handling and follows our public consultation on proposals and subsequent report, published last October.

The new rules will be effective from 15 June 2026, to give the profession four months to prepare for these new rules and arrangements. We will then wait at least a year before running the first data collection exercise.

We are in the process of publishing the **BSB Handbook rule changes**, the first-tier complaints **data collection policy statement** and **supporting guidance.**

Mark Neale, Director General, The Bar Standards Board said:
"This change to the rules will support our work with the profession to maintain and improve the Bar's complaints' handling arrangements.

Working through chambers, we aim to establish a proportionate, routine system for collecting information about complaints that delivers meaningful insights without placing undue burdens on the profession. We will provide support and guidance to chambers to meet these requirements."

BSB: Changing our approach to how we assess Reports we receive about barristers' use of social media

We receive a high number of Reports about barristers' use of social media. They account for around 10% of all Reports we receive, and we close 90% of them. Following a marked increase in Reports, we have reviewed and have decided to change our procedure for the assessment of Reports about social media use.

Currently, where we receive a social media Report from someone who is not identified or clearly identifiable and personally targeted in the social media post, we will treat the report as intelligence. We will assess it in the usual way, but we will not inform the intelligence provider of any decision we make, and they will not have a right of review.

Where the reporter is identified or identifiable and personally targeted in the social media post, we will follow our usual process. That is, they will receive a decision from us and that decision will be reviewable.

Moving to this approach will avoid the application of time and resource on matters in which individuals have no direct interest or standing, enabling us to direct our resources more effectively to the increasing number and complexity of reports.

We've published information about our new approach on the regulatory decision making policies section of our website

Leveson report: Address systemic criminal court inefficiency and stop wasting time on restricting jury trials

Leveson's Independent Review of Criminal Courts, Crown Courts, Criminal justice system

Sir Brian Leveson has published Part 2 of his independent review of the criminal courts. Key recommendations in the report echo those that the Bar Council put forward in our submission to the review, including improving listing practices and case management, making better use of technology and remote hearings, ensuring defendants are delivered to court on time and addressing funding in the justice system.

Commenting, Bar Council Chair Kirsty Brimelow KC said: *"The Bar Council welcomes Sir Brian Leveson's recommendations to address the deep and sustained failures within the criminal justice system, brought about by a slash and burn approach to its funding needs. It is logical that these are implemented and allowed to take effect.*

"In looking at the problems in the criminal justice system end-to-end, Sir Brian has recognised issues consistently raised by barristers including the late delivery of prisoners to court, courts sitting empty and lack of barristers to prosecute and defend. Weeks of court time is wasted for complainants, witnesses and defendants, while an average of 64 Crown Court rooms go unused each day.

"It is therefore vital that time and resource is not further wasted on plans to restrict jury trials when there is no evidence to show it will make a difference any time soon or at all.

"Institute for Government research found that restricting the right to jury trial would save under 2% of court time, if the 'uncertain' estimate of Sir Brian Leveson that a judge-only trial is 20% faster is correct.

"Meanwhile, Crown Courts such as Liverpool and Woolwich have shown that efficiencies and investment of time and resources do reduce the backlog without the need to reduce jury trials.

"We know that our criminal justice system works when properly resourced and when judges are provided the resources required. The prosecution should be proactive in removing cases from the backlog that no longer are in the public interest to prosecute at the level of the offence charged. This worked well during Covid.

"The proposal to reduce jury trials is draining energy and focus from implementing the changes that can be shown to bring down the backlog now.

"It is not too late for the government to change course and to put the same energy into opening the empty courts, investing in the courts and legal aid and enabling Judges to conduct intense listing to remove cases from the backlog."

Barristers make clear justice needs juries during MP court visits across England and Wales

Criminal Barristers, Leveson's Independent Review of Criminal Courts, Criminal justice system

Barristers met with their local MPs at Crown Courts across the country to discuss the criminal justice system crisis and why it will not be solved by curtailing the right to jury trial.

On one day, namely the 30th January 2026, the visit saw 19 Labour, Conservative and Liberal Democrat MPs speak to barristers and court staff in 10 different Crown Courts in all 6 Circuits.

The visit was part of the Bar Council, Criminal Bar Association and Circuit Leaders 'justice needs juries' initiative, launched in response to the government's proposal to restrict the right to jury trials for sentences of up to three years. MPs will continue to visit courts on other dates.

Barristers across the country told their MPs how significant delays were caused by defendants being brought to court late with one describing how a whole week had been lost in a long running trial.

Others showed their MPs how many court rooms were left sitting empty due to the cap on the number of days that courts can hear cases. On Friday – the day of the visit – 59 out of the 516 Crown Courts in England and Wales were empty.

Many discussed the failures of court technology, delays through lack of interpreters and the crumbling infrastructure, illustrated by peeling wallpaper, leaking roofs, faulty lighting and barely functioning facilities for barristers.

The Bar was united in its opposition to the jury trial proposal as they explained it would make no difference to the backlog which currently stands at nearly 80,000 cases.

Several told their MPs that change is needed urgently – in the last year alone, the number of cases in the backlog has increased by 9.3%.

This comes as data published by the Institute for Government shows that plans to introduce judge-only criminal trials for sentences of up to three years would save less than 2% of time in Crown Courts, even taking the uncertain prediction of speed by Sir Brian Leveson.

Meanwhile, the Lord Chancellor David Lammy has suggested that the earliest his jury trial proposal would have an impact on the backlog would be in 2029.

Bar Council Chair Kirsty Brimelow KC – who was at Leeds Crown Court with three local MPs – said: *"We're grateful to the MPs who came to court and heard from barristers prosecuting and defending as to how to fix the criminal justice system and why reducing jury trials is not the answer.*

"We share the same goal of a functioning criminal justice system and of tackling unacceptable delays. Barristers deal with the despair every day. Barristers enable the voices of victims of crime to be heard in court. We need the government to listen, including examining those courts where judges have successfully reduced backlogs without reducing the important participation of a jury. This has been done through intense case listing of cases that will result in a compromise plea or where it no longer is in the public interest to prosecute. The Bar Council looks forward to the government stepping away from expending political time and capital on reducing juries and getting on with implementing the change that will make a difference."

Criminal Bar Association Chair Riel Karmy-Jones KC said: *"The Criminal Justice System is an important public service that underpins civil society. Every day, we see how people's lives can be profoundly changed by contact with it, whether as the accused, complainant victims, other witnesses, and their families.*

"We deeply value the interest our elected representatives take in the work of the courts and their involvement to improve the plight of all concerned.

"Over the next few months our MPs and Peers are going to have to make some hugely important decisions about the future of the CJS. We value these opportunities to show our MPs first hand the day-to-day work of their local Crown Courts.

Beware of fake emails using the Bar Council name

The Bar Council is urging barristers to beware of potential phishing emails using the Bar Council name and asking recipients to log in to MyBar.

A member has reported receiving an email requesting that they log in to see an important message from a Bar Council representative. The link provided is likely harmful or designed to collect an individual's password.

If you receive an email from the Bar Council that looks suspicious, please contact our team via services@barcouncil.org.uk

If you need to log in to MyBar you can go directly to the login page by typing the following url into your browser:

mybar.org.uk

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the lowest earning group, with average incomes 47% of those of White male barristers, who are the highest earning group when looking at the profession as a whole.

As this article intends to focus on the Gender pay gap, specifically in the self employed Bar, I will not dive into differences at the employed bar or differences of income within minority ethnic backgrounds but it is fair to say there are differentials there too.

The report noted that the median income differences between the data for the 2022 report and the 2025 report *increased* for both female barristers and barristers from minority ethnic backgrounds compared to male and White barristers, respectively in other words the gap has widened with Female barristers' median incoming falling from 71% to 70% of their male counterparts over this period.

It starts early

Whilst the Bar Council's working lives report shows that female barristers are twice as likely to work part time than male barristers (14% to 8%) which *may* contribute to some of the differential, nevertheless it does not wholly explain the differential which appears from the very start of practice as evidenced with the Bar Council's report from April 2024 "New practitioner earnings differentials as the self-employed Bar" which found the gender earnings gap for barristers for barristers opens up in the first few years of practice (0-3 years PQE) and is not explained by caring responsibilities, choice of practice are, or amount of legally aided work undertaken by barristers.

Why Does the Gender Pay Gap Matter?

It matters because it reflects economic inequality which is inherently unfair but which might also drive capable women out of the profession thus likely contributes to the retention issues noted in the early to mid-stages of people's careers. Worse, the gender pay gap may reflect discriminatory practices which are unlawful.

What are the causes of it?

Like most things the causes of the gender pay gap are probably multifactorial. Having reflected on this both as an issue but more specifically for this article I venture to suggest a few such factors below:-

(i) Latent (but unrecognised) discrimination which favours instruction of men for "higher value", or leading/led work. This may start outside the Clerks room but may be perpetuated within it (happily not within my Chambers but I have unhappily witnessed this in the past – practices which may not have been fully eradicated).
(ii) There may be gender differences in attitude to risk with a male colleague adopting a more "gung ho" approach to prospects of success in a trial or appeal or when advising on a CFA.
(iii) There may be gender differences in billing/underbilling and women undertaking extensive zero hourly rate work such as can be found in publicly funded work
(iv) There may also be gender differences as to how men and women market themselves. I recall being in a set which had "marketing" events in Private members clubs targeting male solicitors and excluding female members of Chambers. I hope those days are in the past but it isn't possible to say that with total certainty.
(v) Caregiving responsibilities may impact disproportionately on female members of the profession and thus their availability to work unsocial hours ie over early evenings and weekends. A very successful male Silk I know with an equally successful second string frankly credits his success in both fields to the fact that his wife maintains all aspects of family life, leaving him free to focus his career. Would that any female member of the Bar should have such good fortune.
(vi) I am also firmly of the opinion that self worth issues start in the cradle and how we encourage our daughters to view their worth impacts well into their professional lives.

What Can be done about it?

There are a number of resources to assist with this available from the Bar Council. Key recommendations from Sam Mercer Head of Equality and Diversity and CSR at the Bar Council for Chambers are:

1. To collect, analyse and discuss earnings data.
2. Introduce regular practice reviews for individual barristers
3. Have conversations about the fair allocation of led work, tolerance of risk, and the impact of underbilling and unpaid work.
4. Watch out for gender bias in identifying "stars at the Bar" who thereby attract the more lucrative work and who gets the career-defining "unicorn cases"

Collecting, Analysing and discuss earnings data

Every Chambers should be doing this so I hope that yours does. The Bar Council has an Earnings Monitoring Toolkit which provides Chambers with guidance for monitoring earnings and demonstrates how earnings can be used to assess the distribution of work. It also provides practical guidance on different monitoring methods and steps to take if any issues are identified. Collecting the data without analysing it and identifying trends and taking steps to remediate any issues is futile.

Regular Practice Reviews

It is good practice for Chambers to undertake regular practice reviews with their Members of Chambers, mine conducts an annual cycle of formal reviews per practice area with obvious scope for informal reviews on request.

If yours is not then please signpost Senior management to the Bar Council's "Practice Review Guide for Barristers and Clerks" which sets out the principles of practice review and suggests practical ways to get the most of a review process. It also makes the point that whilst Practice Review falls outside of regulation and is entirely voluntary that is their experience that Chambers that prioritise practice reviews will benefit from improved talent attraction, retention and progression, whilst barristers benefit in terms of career development and wellbeing.

Having conversations on fair allocation of led work, tolerance of risk and the impact of underbilling and unpaid work

Chambers should be monitoring the allocation of led work and be able to identify any unfairness in the allocation and remedy it. All of this should be readily identifiable from collection and analysis of the data and having conversations most usefully under the structure of practice reviews. Leading Counsel should be looking to lead more diverse juniors and reinforcing fair allocation of work this way. It is incumbent on all of us.

Identifying Gender Bias in Directory Entries

Being vigilant about this and remediating as necessary.

Conclusion

Whilst it is dispiriting that 50 years after the enactment of the Equal Pay Act 1970 there is a widening gender pay gap, nevertheless I think we should take heart from the fact that the issue is identified and that there are a number of steps that the profession and Chambers can take to address this issue and assist women in closing the gender pay gap to *zero* long before the Equal Pay Act has its 100th Birthday.

Louise McCullough, Barrister, Deka Chambers

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to AI systems developed or deployed within the European Union. It extends to any system whose use produces effects within EU territory (EU AI Act, 2024, Art. 2(1)(c)). A recruitment tool operated from London but applied to candidates in France, or an AI-driven compliance platform supporting EU-facing financial services, may therefore engage obligations under the Act—obligations on which UK barristers will be expected to advise with clarity and precision.

This challenge is compounded by the divergence between European and domestic regulatory frameworks. The European Union has opted for binding legislation, emphasising rights protection and precautionary oversight. The United Kingdom, by contrast, has pursued a sectoral, principle-driven model designed to encourage innovation, relying on existing regulators rather than the imposition of statutory duties (UK Government, *AI Regulation: A Pro-Innovation Approach*, 2023[2]; and UK Government, *AI Opportunities Action Plan*, 2025[3]). For clients operating across both jurisdictions, the result is a clear regulatory asymmetry: exacting obligations under EU law, coupled with a markedly lighter-touch regime in the United Kingdom. Barristers advising in this space must therefore be able to do more than recite parallel legal requirements. They must explain how these regimes intersect, how compliance in one jurisdiction may fall short in another, and where tensions between them are likely to arise.

It is in cross-border practice that these issues assume practical force. A barrister advising on commercial disputes, regulatory investigations, or public law challenges must now consider whether AI systems—whether deployed by a client or relied upon by an opposing party—meet the requirements of EU law. The EU AI Act imposes detailed obligations concerning record-keeping, technical documentation, and auditability (Arts. 8–15). In practical terms, this means that questions of lawful deployment, the adequacy of human oversight, and compliance with transparency obligations are likely to arise not only in regulatory enquiries, but in litigation and arbitration. Issues of liability are no less complex. Proposed reforms to EU product and AI liability regimes will operate alongside, and at times uneasily with, established principles of UK tort and contract law. The barrister's task is to guide clients through this developing terrain with clarity, caution, and foresight. The increasing use of AI within legal practice introduces a further layer of complexity. Tools for research, document review, case management, and analytics are now commonplace. Their availability, however, does not alter the fundamentals of professional responsibility. Responsibility for the accuracy of advice, the integrity of submissions, and compliance with duties of confidentiality and data protection remains squarely with the barrister. Recent case law has underlined the point in uncompromising terms. In The Administrative Court has recently handed down judgment in *R (on the application of Ayinde) v London Borough of Haringey [2025] EWHC 1040 (Admin)*, the submission of fabricated authorities—whether produced by artificial intelligence or otherwise—was treated as serious professional misconduct, attracting wasted costs and the prospect of regulatory consequences. The lesson is a familiar one, but newly pressing. The use of AI does not dilute the barrister's duty to the court. Where EU-facing clients or proceedings are concerned, failures of oversight or governance may carry not only professional repercussions, but regulatory consequences as well.

AI also presents opportunity. Used with restraint, it can enhance efficiency and sharpen analysis, allowing barristers to devote greater attention to matters of judgment, strategy, and advocacy. The difficulty lies in maintaining balance. Outputs must be capable of verification and explanation, and their use subject to effective human oversight. Questions of bias, data provenance, and confidentiality are not ancillary concerns. They sit at the centre of both regulatory compliance and professional integrity, particularly where EU obligations are engaged. The task for the barrister is to integrate technological assistance within a framework that remains ethical, accountable, and consistent with longstanding professional duties.

With August 2026 approaching, questions of readiness acquire a sharper edge. For the UK Bar, preparation does not require mastery of every technical provision of the EU AI Act, but an informed and engaged understanding of its operation: recognising when UK-based activity engages EU obligations, advising clients on governance and risk mitigation, and ensuring that the use of AI within practice remains ethically grounded[4]. Regulatory sandboxes, encouraged both within the European Union and in the United Kingdom, may provide a useful means of testing AI systems in controlled conditions and of anticipating practical difficulty (EU AI Act, Art. 57). Technical literacy, careful documentation, and collaboration with technologists will all play a part. Of equal importance, however, is perspective. AI regulation is best understood not as an external administrative burden, but as a further expression of professional accountability in a changing legal landscape.

The EU AI Act is no distant law. Its reach is immediate, shaping cross-border practice wherever UK barristers advise clients with a European dimension. Its significance lies not in formal applicability but in the practical environment it creates: the obligations it imposes, the risks it exposes, and the decisions it demands. Barristers who engage early, who grasp how domestic duties intersect with EU requirements, and who implement clear governance arrangements will be best placed to advise confidently and effectively as August 2026 approaches. Far from diminishing the advocate's role, the Act reinforces it. Honesty, diligence, and independent judgment remain non-negotiable, even as AI and other emerging technologies change the tools through which legal work is carried out. The challenges are new, but the fundamentals endure: careful thought, rigorous oversight, and professional discernment.

Divya Kesar, Barrister, The Barrister Group Chambers.

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[1] *European Union, Artificial Intelligence Act, 2024 (https://artificialintelligenceact.eu/the-act/) accessed on 20 January 2026.*
[2] *UK Government, AI Regulation: A Pro-Innovation Approach, 2023 (https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper) accessed on 25 January 2026.*
[3] *UK Government, AI Opportunities Action Plan, 2025 https://www.gov.uk/government/publications/ai-opportunities-action-plan/ai-opportunities-action-plan (accessed on 9 March 2026).*

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A Brief Guide to Barristers' Obligations under the Money Laundering Regulations

Understanding our obligations under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the Regulations") must be a priority for all barristers.

By Alejandra Tascon, Barrister, Mountford Chambers

In practice, the scope of these duties is not always straightforward. Many practitioners rely on chambers' clerks to undertake client onboarding and carry out necessary checks. While clerks perform an important administrative function, such reliance does not absolve an individual barrister of responsibility where required due diligence has not been properly completed. Ultimate accountability remains with the practitioner.

Barristers are not automatically subject to the Regulations by virtue of their professional title. Rather, they apply where the work undertaken brings a barrister within the definition of an independent legal professional under Regulation 12. Compliance is essential not only to avoid regulatory sanction, but also to mitigate the risk of criminal liability and reputational harm.

Given the diversity of modern practice, including privately funded work, complex international corporate structures and supply chains, and instructions received under the Public Access scheme, barristers may be exposed to a range of risk areas, from client identification and verification of source of funds to potential tax evasion risks. It is therefore imperative that each practitioner has a clear understanding of their obligations to ensure compliance across all aspects of practice.

1. What is Money Laundering?

Although the Proceeds of Crime Act 2002 does not provide a single concise definition of money laundering, the principal offences are set out in sections 327–329, with key definitions contained in section 340.

Money laundering is commonly understood as the process by which the illicit origin of money or other property is concealed or disguised so that it appears to derive from legitimate sources.

In this context, the proceeds involved must constitute "criminal property". Section 340(3) defines criminal property as property that represents a person's benefit from criminal conduct, where that person knows or suspects that it constitutes such a benefit. Criminal property is not confined to cash; it includes all forms of property, including real property, personal property and intangible assets. The laundering process is commonly described in three stages:

a. Placement – the introduction of criminal proceeds into the financial system, for example by depositing funds into bank accounts or transferring monies through professional client accounts.

b. Layering – the movement of funds through a series of transactions to obscure their criminal origin, often across accounts, jurisdictions or entities.

c. Integration – the reintroduction of the funds into the legitimate economy in a manner that appears lawful, such as through the purchase of high-value assets including real property.

Understanding these stages assists barristers in identifying potential red flags and recognising when suspicious activity may arise in practice. A failure to recognise or respond appropriately to such risks may lead to criminal and regulatory consequences.

2. Who must comply with the Money Laundering Regulations?

The Regulations apply to barristers who fall within the definition of "independent legal professional" and who participate in certain types of financial or transactional work.

In particular, the Regulations are engaged where a barrister provides legal or notarial services in the planning or execution of transactions concerning:

a. the buying and selling of real property or business entities.
b. the managing of client money, securities or other assets.
c. the opening or managing of bank, savings or securities accounts.
d. the organisation of contributions necessary for the creation, operation or management of companies; or
e. the creation, operation or management of trusts, companies or similar structures.

Purely advisory or litigation work will not necessarily bring a barrister within scope. However, where a practitioner's role goes beyond advocacy and enters the territory of transactional or financial structuring, the Regulations are likely to apply.

Despite this, Barristers are under a duty to understand the relevant AML principles and to apply them to their practice where applicable. Barristers must therefore assess, on a case-by-case basis, whether the nature of the work undertaken places them within the regulated sector.

3. Conducting a Risk Assessment and Risk Factors to consider?

A crucial part of compliance with the Regulations is carrying out a risk assessment. The purpose is to identify, assess, and mitigate the risk that your work could be used to facilitate money laundering or terrorist financing.

For barristers, a risk assessment typically involves the following:

a. Client risk – Are you dealing with a high-risk client, such as a politically exposed person (PEP), overseas entity, or a client from a jurisdiction with weak AML controls?

b. Service risk – Does the work involve financial or real property transactions, non-contentious tax advice, or other activities covered by Regulation 12?

c. Transaction risk – Are there unusually complex or opaque transactions, large sums of money, or unexplained sources of funds?

d. Delivery channel risk – Are instructions received directly from the client (public access), via a firm, or through other intermediaries?

The outcome of the assessment should guide the level of due diligence you carry out.

4. Costumer Due Diligence (CDD) – What is it? How is it done?

Customer Due Diligence (CDD) involves verifying the identity of the client and, where relevant, the beneficial owner, and understanding the purpose and intended nature of the instruction. Its

purpose is to ensure that a barrister does not become inadvertently involved in money laundering or terrorist financing.
Regulation 27 requires CDD to be conducted when:

1. establishing a business relationship.
2. carrying out an occasional transaction of €1,000 or more of cash or cryptocurrency (or €15,000 generally).
3. there is suspicion of money laundering or terrorist financing; or
4. there is doubt about the adequacy of previously obtained identification information.

This list in not exhaustive. Regulation 27 also requires conducting CDD as a relevant person in accordance with International Tax Compliance Regulations 2015, where there has been a change in circumstances relevant to the risk assessment, and "at other appropriate times to existing customers on a risk-based approach". Relevant persons need to take into account changes in identity or beneficial ownership, transactions outside of the knowledge of the customer, and any other matter that might affect the relevant person's assessment of the money laundering or terrorist financing risk.

CDD is not a one-off exercise. Regulation 28 requires ongoing monitoring of the business relationship and review of client information to ensure it remains accurate and appropriate to the risk. The extent of CDD measures must be proportionate to the level of risk identified.

5. Enhanced Customer Due Diligence? – When is this required and how does it work?

Enhanced Due Diligence (EDD) involves additional scrutiny where a higher risk of money laundering or terrorist financing is identified. EDD measures must be applied in higher-risk situations, including where the client or beneficial owner is a politically exposed person (PEP), where the client is connected to a high-risk jurisdiction (e.g. Russia, Iran), or where complex corporate structures or unusual transactions are involved (e.g. being unusually large, unusual in pattern, or having no apparent purpose).

In accordance with Regulation 33, EDD is required for PEP relationships; however, the extent of the measures applied must be proportionate to the level of risk (see Regulation 35). UK domestic PEPs should generally be treated as lower risk unless other risk factors are present.

EDD builds on standard CDD and may include measures set out in Regulation 33(5), such as:

1. Obtaining additional verification of identity from independent and reliable sources.
2. Gathering further information to understand the client's background, the transaction, its purpose, and the client's financial circumstances.
3. Conducting enhanced and ongoing monitoring of the business relationship.

The higher the risk, the more robust the checks must be.

6. What happens if I cannot complete CDD?

A barrister acting as an independent legal professional may rely on a third party to carry out Customer Due Diligence (CDD), such as a solicitor, accountant or regulated financial institution, provided the conditions in Regulation 39 are satisfied. This is known as third-party reliance.

Reliance does not transfer responsibility. The barrister remains legally responsible for compliance and must ensure that the third party will provide the necessary CDD information and documentation on request. Evidence of reliance should be retained.

If CDD cannot be completed in accordance with the Regulations, the barrister must:

a) not establish the business relationship or must terminate it if already established;
b) not carry out any further transactions for the client through that relationship; and
c) consider whether a disclosure is required under the Proceeds of Crime Act 2002.

7. The Function of the Bar Standards Board?

Under the Regulations, the supervisory authority for barristers is the Bar Standards Board (BSB).

As an AML supervisory authority, the BSB is responsible for monitoring compliance with the Regulations. Its functions include issuing guidance, conducting inspections, requiring the production of information and documents, and taking enforcement action where breaches are identified, including the imposition of civil penalties and the publication of disciplinary findings.

Detailed guidance on AML compliance is available on the BSB website.
The Bar Council, by contrast, is a representative body. Although it may provide practical guidance and resources, it does not act as the AML supervisory authority and does not enforce the Regulations or investigate breaches.

8. Consequences of Ignoring AML Obligations?

The Proceeds of Crime Act 2002 creates criminal offences where a person becomes involved in money laundering or, in the regulated sector, fails to disclose knowledge or suspicion of money laundering. Penalties may include imprisonment, a fine, or both.

Breach of the Regulations may also give rise to regulatory action even in the absence of criminal proceedings. Under Regulations 76-86, supervisory authorities, such as the Bar Standards Board, have powers to:

a. impose civil penalties.
b. publish statements identifying breaches; and
c. issue directions requiring compliance.

In serious cases, supervisory authorities may also conduct investigations and refer matters for disciplinary or criminal proceedings.

9. Conclusion

The Regulations require barristers to adopt a proactive approach to compliance. Failure to do so may result not only in regulatory sanctions but also criminal liability. It is therefore essential that practitioners understand their obligations and ensure appropriate systems and practices are in place.

Compliance is not merely a regulatory formality; it is an essential safeguard against financial crime and a core professional responsibility.

10. Useful Sources

The following sources provide further and more detailed guidance for practitioners:

1. LSAG Money Laundering Guidance for the Legal Sector 2025
2. LSAG Part 2
3. Guidance for Barristers and BSB entities
4. The Bar Standards Board Website AML Guidance

Alejandra Tascon is a barrister specialising in regulation and professional discipline at Mountford Chambers.

The Vanishing Court: Litigants in Person and the Future of Civil Justice

Jacob J Meagher Barrister (E&W, IE, AU, NZ, AIFC) and Mediator, 1EC Barristers, jmeagher@1ec.co.uk

According to Ministry of Justice statistics, in the County Court from July to September 2025 at least 59% of civil cases had an unrepresented party.[1] With civil legal aid an increasing improbability for even the most impecunious, and the 2026 Solicitor Guideline Hourly Rates having increased to £579 (plus vat) at the top end, one does wonder about the state of civil justice in England and Wales. The rule in *Barton v Wright Hassall LLP* [2018] UKSC 12 that there is no special treatment for litigants in person being rigorously applied,[2] this creates a plethora of problems and should give pause for thought.

Regularly we see qualified legal professionals erring when it comes to the CPR, and yet we also expect an LIP to rigorously comply; from a public policy perspective, this seems strange. As a society don't we want to avoid recourse to self-help. *A verbis ad verbera* and all that. Shouldn't civil justice be accessible to the citizenry?

Take our version of small claims court, the somewhat misleadingly called 'Money Claims Online'. Practice direction 7C provides that one may claim a monetary remedy up to £100,000.00 via an online portal, albeit in practice one can only claim up to £10,000.00,[3] include particulars of claim limited to 1080 characters, and if no default judgment is issued the claim will be sent to a local County Court Hearing Centre. It is literally a way to file and serve a claim for a money remedy online, a truncated part 7, and respond with a preliminary defence. That said, the full gamut of the CPR applies. An online small claims court it is not, nor does anything other than the 'claim' take place online.

It seems odd that we have an effective and (somewhat) user friendly tribunal system originally designed for lay individuals in areas such as property/land, social welfare, employment, each with their own simplified rules of procedure, and importantly presumptions of no costs, and no fees for making interlocutory applications, yet for consumer law or small debt matters we do not have what many jurisdictions describe as a Disputes Tribunal or Small Claims Court.[4] One might contrast this with the bizarrely efficient 'Single Justice Procedure', where the state has worked out a way of convicting people of minor criminal offences, often by default, often without their knowledge.[5] Clearly, priorities are in order.

This barrister got into a dispute over a TV he recently purchased, a midlife crisis sized behemoth which adorns the wall displaying no picture and emitting no sound, now modern art. The facts are not disputed. The claim fee via Online Civil Money Claims was £455.00, the trial of 90 minutes is to be held in person at any time between 10am and 4pm at the local County Court (parties are required for the whole day), with a trial fee of £346.00 soon payable. As the Defendant wishes to update their defence, they have been advised to pay and submit an N244. Directions run four pages. In fairness to the retailer they complain that they need legal representation, and that court fees total 1/4th the cost of the TV. The process, and costs, are thoroughly convoluted for a consumer law dispute.

In a recent speech the Master of the Rolls posited *"How can and should the fundamentals of modern justice be delivered more quickly, more efficiently and at more proportionate cost, but still justly in the forthcoming generation?"*. He responded *"One of the problems with providing a definitive answer to this question is that technology is moving very fast, and the thought leaders in our society have been struggling to keep up with its capabilities"*, but that *"we are not starting from scratch"* as *"In civil, family and tribunals justice, we are already establishing a digital justice system under the auspices of the Online Procedure Rules Committee."*[6] Hurrah for the OPRC! I am less convinced; I am also not in the 'forthcoming generation'. In my humble opinion, a functioning civil court accessible to the citizenry has very little to do with "AI" (I dare not comment on its drafting), but much more to do with being able to pay court fees online (HMCTS will occasionally accept credit cards over the phone), mandating service via email, and getting the basics rights – not shooting for the next century. Now that there is court ordered mediation, it might be optimal to order/require parties to engage in verbal dialogue once a month. Interminable correspondence is great for revenue, but not for resolving matters or for CPR 1.1.

Current joint guidance issued by the Bar Council, the Law Society, and Cilex on 'Litigants in Person: Guidelines for lawyers'[7] notes that *"you are under no obligation to help a LiP to run their case or to take any action on a LiP behalf. Moreover, you should be aware that doing so you might, depending on the circumstances, be failing in your duties to your own client."*[8] Indeed, there appears to be a recent trend of hostility and gamesmanship towards LIP's, some of which clearly crosses the ethical line.[9] The most courts appear to do is to order the represented party to take charge of bundling and to theoretically comply with the overriding objective. Albeit judgments as to how CPR 1.1 applies to LIP's are thin on the ground.

Cognate jurisdictions treat the responsibility of Counsel towards LIPs somewhat differently than in England & Wales. In New Zealand, the 2008 Conduct and Client Care Rules mandate that Counsel must assist the court and not take unfair advantage of a self-represented opponents lack of knowledge. Rule 13.10 prohibits misleading the court or failing to correct a misleading statement, Rule 13.4 requires counsel to ensure that that the court is properly informed of the relevant law and procedural position. If an LIP misunderstands a point of law, fact or procedure that is material to the court's determination, Counsel must assist the court by clarifying the correct position. This is about assisting the court not the litigant, it is a procedural obligation regarding ones' primary duty. The obligation is higher if representing a public sector authority, in Australia the model litigant rule comes into play, something yet to catch on here.

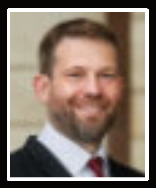
What can practitioners conclude from all of this?

The incidence of LIP's will continue to increase, there is no suggestion that the current state of the civil court system will improve, nor will court fees decrease. While the introduction of mandatory mediation has been a welcome event, it certainly hasn't diverted a significant proportion of cases away from the courts. An LIP isn't going to respond positively to mediation if an AI bot tells them they have a very strong claim. Constant ode's to how AI will vastly improve the justice system are frankly absurd, the underlying civil stock is crumbling. Regarding the Government's moves to bring in 'Immigration Adjudicators' (which is odd as immigration Tribunal

Judges were originally Immigration Adjudicators)[10] one does wonder about access to civil justice and whether capacity could be unlocked if a true online Disputes Tribunal and Disputes Adjudicators could be introduced for disputes pertaining to debt and property under £50,00.00.[11] If something does not change, and if there is no access to civil justice, then I fear that people will simply resolve disputes amongst themselves, not in a good way, and not by using AI.

***** *Jacob J Meagher* ***Barrister (E&W, IE, AU, NZ, AIFC) and Mediator, 1EC Barristers, jmeagher@1ec.co.uk***

[1]See the following, no compensative set of statistics is available for the High Court: https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-july-to-september-2025/civil-justice-statistics-quarterly-july-to-september-2025?utm_source=chatgpt.com# defences-including-legal-representation-and-trials (accessed 10.02.26)
[2]See also; HHJ Matthews in Reynard v Fox [2018] EWHC 443 (Ch); Jones v Longley & Ors [2016] EWHC 1309 (Ch); and more recently HHJ Matthews in John Kenneth Greenwood & Anor v Ronald Patrick Pringle [2024] EWHC 84 (Ch).
[3]See PD 51R – Online Civil Money Clams Pilot.
[4]See the New Zealand Disputes Tribunal as an example: https:// disputestribunal.govt.nz/
[5]See The Telegraph 10.02.26 "Pensioner with dementia prosecuted for not insuring car".
[6]Sir Geoffrey Voss, "Speech by The Master of the Rolls: Justice for all, justice for the accused" (5 February 2026, Old Bailey, London).
[7]Litigants in person: guidelines for lawyers (June 2015)
[8]Pg 6, citing Khudados v Hayden [2007] EWCA Civ 1316 [38]
[9]See SRA v Tomlinson [2026] SDT 12799-2024.
[10]Per the Immigration Appeals Act 1969, see also the Wilson Report of 1967.
[11]In NZ the Tribunal limit is the equivalent of around £30k, in New South Wales the limit is circa £52k.



Commercial Music to Commercial Law: Navigating an Unlikely Career Change

At Hyde Park, the stage is positioned so the performers can see the sun set behind the crowd. Eighty thousand silhouettes, the sky blazing orange and pink above them. It was early September, the last night of the tour. I listened to the band, watched the crowd, felt the rhythm. As we lined up at the end of the show, bowing in unison, I knew I wouldn't be doing this for much longer.

By Samuel Grimley, Barrister, One Essex Court

I was thirty-five. I had been a session musician for over a decade. In that time, I had seen plenty of budget hotels and drab green rooms. To some, my life looked like a success, but only if you stepped back ten paces and squinted. The reality was constant travel, unpredictable income, and a personal life that could not withstand the strain. In my twenties, it felt worth it. In my mid-thirties, it did not.

I could see where it was heading, and I did not like the ending. Even so, the idea of starting again felt absurd. I started, cautiously, with the obvious things: advice, books, and personality tests that promised to identify my "true calling". I made a list of transferable skills. I could stumble through a jazz standard, write a half-decent pop song, and appear calm on stage when I was terrified. I also had a music degree and a network of extremely talented drunks and drifters. It was not much to work with.

Sometime later – I can't remember when exactly – I met a friend for lunch. Over the main course, he asked if I'd thought about becoming a lawyer. I choked on my spaghetti. "Absolutely not. Why on earth would anyone want to do that?" He said something about the lurid details of the lives of clients. I can't remember. It seemed ridiculous.

But it was an idea. I knew a lawyer; perhaps I could talk to him. This lawyer, by then a partner at a City firm, kindly took me to dinner. He told me a story about a young associate who had stopped him in the corridor to gush about how "interesting" she found his specialism. "What exactly interests you?" he had asked her. She stuttered, stumbled, and drew a blank. "You see" he explained to me, "there is nothing interesting about my job".

He was, however, broadly encouraging. The solicitor route would be the safest; the Bar would mean yet more financial uncertainty. Unless, of course, I became a commercial barrister. "But" he added with a chuckle, "that will never happen".

I didn't make the decision to retrain all at once. It would have been too much. Instead, I made a series of smaller decisions: to attend an open evening; to email someone to ask for advice; to enquire about a conversion course.

Two days before term started, I enrolled.

I didn't tell anyone. I worried that if my fellow musicians learned I was studying law, the gigs would dry up. Once term began, I sat at the back of the tour bus, hiding my notes on offer and acceptance. After the shows, while my bandmates drifted to the bar, I slipped quietly to my room to read Caparo v Dickman. I was, to my surprise, starting to enjoy it. Perhaps it was not such a daft idea after all.

Then, in March 2020, the music industry shut down. Every gig, every tour, and every West End show was cancelled. My diary emptied overnight. I suddenly had total freedom to study, but no work at all. When my lease came up for renewal, I had no income to show.

I moved into a camper van the week my final dissertation was due. I submitted it from the back of the van on patchy mobile internet, watching the upload bar falter, fail, and restart. It finally went through with seconds to spare. Sitting there afterwards, in the stillness that follows a narrowly avoided disaster, I realised I had crossed a line. This was no longer an experiment.

Not long after that, I moved to Cambridge to live with a friend, and things stabilised. I applied for everything I could find: pupillage, Inn scholarships, judicial assistant and paralegal roles. I was rejected from all of it. I started delivering water bottles from the back of a van.

Then, one day in March, I got an email from Oxford University. I had applied for the BCL on a whim, fully expecting to be rejected; the website more or less told GDL graduates not to bother. Instead, an offer came through. It was a boost, quickly followed by the obvious problem: I could not afford the fees, still less a year of living costs. I called the faculty to say thank you, but it was probably a "no".

In June, another email arrived. I had been awarded a scholarship. Since I hadn't applied for it, it came as a shock. It was hugely encouraging, but it still wasn't enough. Another month passed, and I was offered a second scholarship. I started selling my guitars. Then, a few weeks before term, a third scholarship came through. I sold my piano, the instrument I had played professionally for fifteen years, and it was just enough.

I could afford to go, but I did not know how I could manage it. My father had dementia and needed care, and I had a young godson I helped to look after. Disappearing for a year was not an option.

Oxford and Cambridge are not far apart on a map, but, in practice, the arrangement appeared unworkable. Keeping a car in Oxford was forbidden for students, and the trains were too slow and too brittle for something that had to happen every week. If I was going to do the BCL without abandoning my responsibilities in Cambridge, I needed a way of getting around quickly and cheaply. A few days before term, with a loan from my family, I bought a 125cc motorbike and completed the compulsory training. For the next year, I rode two hours to Cambridge on Friday afternoon, and two hours back to Oxford on Sunday night. I would spend Saturday with my father, and Sunday with my godson. Monday to Friday, I studied. I rode around 140 miles a week on country roads, often in the dark, on a machine I could barely operate. It was frightening, but it was also the only way it could work.

Oxford was a revelation. I found myself in seminars with academics whose books I had been highlighting and annotating during my law conversion. They expected me to contribute as an intellectual peer, which, for a session pop musician, felt like a stretch.

Around the table were students who seemed to have arrived pre-equipped with an instinct for legal argument: quick to spot the point, quick to find the authority for it, and adept at framing it within competing intellectual frameworks.

The workload was relentless. Each week, for each subject, the reading lists claimed every spare hour. The tutorial questions assumed students had not only read the material, but absorbed it, synthesised it, and formulated their own arguments. The standard was exhilarating, but it was also punishing. By the second term, most days, I was simply trying to stay afloat.

Shortly before my final exams, I met the then Dean, Mindy Chen-Wishart. She asked me how I was getting on. When I hesitated, she noted wryly, "the BCL has been demanding the impossible since 1535. If you can get through this, you can do anything."

By the time I had finished, the Bar seemed plausible.

When pupillage applications opened again, I applied to twenty-five sets. I received nineteen first-round interviews and reached eight second rounds. It was my best result so far. Then the rejections began to arrive, one by one. I was not surprised. I had met some of the other candidates. They were exceptional.

My interview at One Essex Court was in late April. By then, almost every other set had already sent the polite letter: thank you, but no. I assumed I would be rejected again. I decided that if I was going to be rejected, I might as well enjoy it. I went in intending to have fun.

To my surprise, it seemed to go well. My analysis met little resistance. I saw a few nods. I even got a laugh.

On offer day, I collapsed on the floor in relief.

Pupillage was a joy. My supervisors were not only brilliantly clever, but kind, and excellent teachers. They took the time to explain new concepts carefully, to give thoughtful feedback, and to treat me as someone worth investing in. The work was engaging, and for the first time in years I felt like I had found my professional home.

Years earlier, during my law conversion, one of my tutors had declared: "Sam, you are a lawyer who has been moonlighting as a musician for decades." By the end of pupillage, I started to wonder if she had been right. How strange.

A few months ago, I became a full tenant. I am now a barrister specialising in commercial, competition, and intellectual property law.

People sometimes ask what I have learned. I struggle with the question, not because there were no lessons, but because none of them feel tidy. What I've come to understand is that the abilities I spent years developing in music, such as discipline, nerve, and an instinct to keep going when things looked absurd, ended up mattering in ways I couldn't have anticipated. They didn't point to some pre-written path so much as give me the tools to survive one.

The transition itself was anything but clean. It was uncertain, often frightening, and rarely felt like a sensible plan. Even now, there is no guarantee of ease or security. What has changed is simply this: I no longer expect fulfilment to arrive packaged as certainty. It comes, instead, from committing to something difficult, and accepting that the work of becoming the person who can do it doesn't really end.

Samuel Grimley, Barrister, One Essex Court

Police misconduct hearings post 2024 – Are they fair trials?

It has long been accepted that professional discipline hearings should be compliant with the European Convention of Human Rights Article 6(1) [right to a fair trial] and the rules of natural justice. Given their role in law enforcement, police officers facing misconduct hearings should be entitled to expect the same rights as those who they take before the courts. However, recent changes to the police misconduct regime arguably mean that even if justice is done, it cannot be seen to be done by an independent tribunal.

By Nick Hawkins, Barrister, Normanton Chambers

The Police (Conduct) (Amendment) Regulations 2024 fundamentally changed the nature of Police Misconduct Hearings. Regulation 3(3) changes the composition of the panel that is to conduct a misconduct hearing, constituted under regulation 28 of the 2020 Regulations. The panel is to comprise a chair, who must be the chief of police of the police force concerned, and two lay members.

This change at the behest of a small number of senior police officers and a former Home Secretary removed Legally Qualified Chairs [LQCs] from the panel, which was henceforth to comprise a chief officer and two independent panel members.

LQCs were first introduced as Chairs in police misconduct hearings on the 1st January 2016. Their introduction was brought about by an amendment to the Police (Conduct) Regulations 2012 namely the Police (Conduct) (Amendment) Regulations 2015 that made provision for LQCs to chair misconduct hearings relating to allegations of gross misconduct arising on or after the 1st January 2016, replacing the senior officer who previously chaired misconduct hearings. In 2020 the case management powers of LQCs were increased and most involved in Panels would say hearings became more efficient as a result.

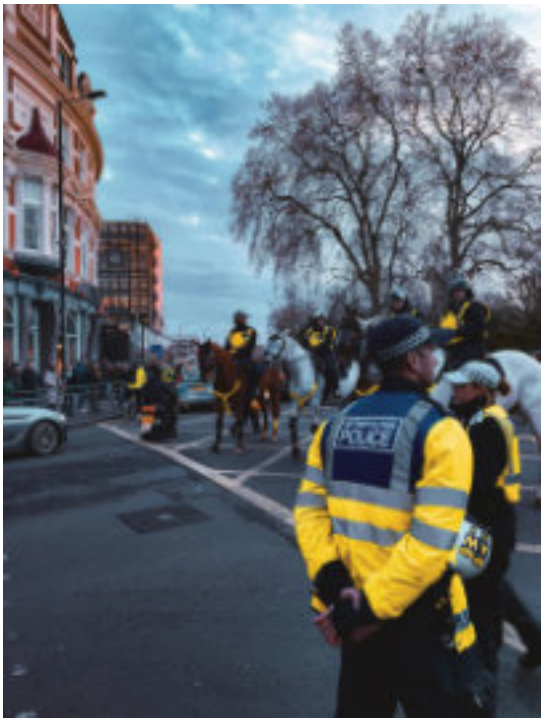
Criticism of LQCs was based on a misperception that panels with an LQC were less likely to dismiss officers before panels. To dismiss a panel would have to first reach a finding of gross misconduct and then, following the Guidance on Outcomes, issued by the College of Policing would have to consider whether a sanction other than dismissal was the right sanction before concluding that dismissal was the only options. Having chaired numerous panels in around 20 different police force areas, I can confidently say that panels were not reluctant to dismiss officers when it was right to do so and did so in the overwhelming majority of cases in which gross misconduct was found. Reasons for not dismissing officers would be finding the allegations not proven, or that they amounted to misconduct, or where the mitigating factors were such that the officer could be retained. Often in the latter case it would be character references from senior police officers that made the difference. The reasons for not dismissing officers should be obvious, but this did not satisfy those who were critical of LQCs.

It is worth remembering why LQCs were introduced. An Independent Review of the Police Disciplinary System in England and Wales, conducted by the retired army general Chip Chapman was published in 2014. At paragraph 5.9 he wrote, "I believe a legally qualified chair may be necessary to impart a level of independence where a panel is considering dismissal so that the management in the police can focus upon the restorative outcomes that are necessary below dismissal." This was formalised in Recommendation 19.

General Chapman served in the army in the 1990s, when the court martial system was challenged in the European Court of Human Rights in the "CASE OF FINDLAY v. THE UNITED KINGDOM". In February 1997 the Court ruled that an army court martial breached Article 6(1) of the European Convention of Human Rights (the right to a fair trial). In paragraph 76 of the judgement the Court observed, "In order to maintain confidence in the independence and impartiality of the court, appearances may be of importance".

Prior to the Findlay case courts martial were convened by a senior officer, who appointed the judge advocate, the members of the court [jury] and the prosecutor. Whilst most involved in a court martial at the time would say the hearings were subjectively fair, the appearance may have suggested something else. The UK government of the day acted swiftly, and the Armed Forces Act 1996 separated the functions of prosecutor, court service and senior officer. I had the honour of being the first Naval Prosecuting Authority, independent of the chain of command and free from any pressure from senior officers.

Chip Chapman's Recommendation 19 corrected the problem in the police service, which was very similar to that



ruled in breach of Article 6(1) in the Army. Yet whilst the UK Court Martial system has evolved with even more safeguards for a serviceman facing court martial, the police system has reverted to the pre-2016 system.

To date and to the best of my knowledge there has been no challenge to the fairness or to the appearance of fairness of the 2024 changes. This may be surprising given that an officer facing a Misconduct Hearing has got there as a result of a process when all of the functions come under the command of one person.

Police Officers are normally investigated by the Professional Standards Department of their own force. PSDs are typically headed by a Superintendent or Chief Superintendent answerable to the Deputy Chief Constable who is directly line-managed by the Chief Constable. The decision to refer allegations to a Misconduct Hearing is made by an officer appointed as the Appropriate Authority on behalf of the Chief Constable. Whilst the Independent

Panel Members are appointed by the Office of the Police and Crime Commissioner the Chair of the Panel is normally an Assistant Chief Constable, themselves line managed by the same Chief Constable. Thus, the Chief Constable controls the investigation, the decision to prosecute and is the line manager of the Chair of the panel, who has a major say in findings of fact and on sanction.

One of the rules of natural justice is Nemo Iudex in Causa Suas, also referred to as the rule against bias. Within this are the following principles. Impartiality requiring the the deciding body to be independent, impartial, and free from bias (actual or apparent), and the Appearance of Justice where justice must not only be done but must also appear to be done, meaning the appearance of bias is often enough to breach the rule.

Article 6(1) of the ECHR states, "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." This encapsulates the principles set out above.

Reaction to the 2024 changes by the police staff associations was predictably negative. Police Federation discipline representatives saw the previous composition of the Panel as fair and the Superintendents' Association Panel of Friends had similar views. To date neither body has instructed counsel to argue the Article 6(1) point at a newly constituted Panel. The argument would surely be based on the appearance of fairness, as it would not be sensible to accuse the Chair of bias. However, if I were a police officer facing a panel chaired by an Assistant Chief Constable, who is answerable to the Chief Constable on whose authority the allegations are brought, I would seriously worry about whether I had any chance of leaving the Hearing with my career in tact. This concern would be heightened if I served in one of the police forces whose Chief Constable had expressed strident views about LQCs, or about the need to dismiss every officer accused of gross misconduct – and many Chief Constables have expressed such or similar views.

The public rightly want police officers to uphold the highest standards and there can be no place in any police service for those found to have committed the worst breaches of the standards of professional behaviour. However, the public would expect those officers who need to be dismissed to only be actually dismissed if the case is proved and dismissal is the appropriate sanction. They would also expect the officer to have faced a demonstrably fair hearing.

I conducted my last Misconduct Hearing as LQC in early 2025 and have little or no contact with PSDs or police staff associations. There may well be representations being made to the Home Office that the 2024 changes were not a good idea, but to date the new government (headed by a lawyer known to support the ECHR) has pressed on with the changes introduced by a government of a different political persuasion.

I nonetheless, remain surprised that the new system has not been challenged as set out above, as I believe that an argument that the hearing was an abuse of process due to a breach of ECHR Article 6(1) would have a reasonable chance of success. I would recommend that those involved in representing officers look up the case of Findlay and consider whether they draw the same conclusions that I have set out in this article.

Nick Hawkins, Barrister, Normanton Chambers

Setting and maintaining boundaries in your practice to ensure sustainability

I do sometimes wonder if there is another profession where an entry in your diary stating "Away" can prompt the question "But are you away away?" Where the breaching of boundaries sometimes feels like it has become a competitive sport?

By Catherine Brown, Barrister Coach/Trainer

And it isn't just the clerks, leaders or clients who want to breach the boundaries of busy Counsel.

All too often it is the barristers I work with who are themselves both setting (or attempting to set) and then riding roughshod over their own boundaries. Whether it's taking the laptop on honeymoon or answering the phone at a family dinner when you were supposedly unavailable, it is all part of the same picture.

The consequences of a lack of boundaries

If it isn't already obvious, the word "sustainability" in the title of this article is there because I don't think this is a healthy way for most people to stay at the Bar long term. You don't have to look too far to see that retention at the bar is a problem, particularly for women.

And the fact that technology has made us more and more available, instead of giving us back time as we were perhaps led to believe, makes boundaries more necessary than ever before.

As well as burnout and a rush to the exit, there are other consequences:

i) If you are not clear about when you are and are not available to work, that uncertainty will be passed on to others. They might find themselves unsure about whether they should contact you at a certain time.
ii) Your rest time – evening, weekends and holidays will not give you the benefit you can get from a proper switch-off.
iii) In turn, being always "on-call" without proper rest means that the quality of work is bound to suffer at some point.

And all of that is without even starting to get into the impact on personal and family life.

The issue

If you think about it, there is something of a perfect storm around building a successful practice at the bar and working within boundaries that are right for your particular circumstances:

- You're self-employed so you are nursing a fear that if you do say you are "away away" on this particular occasion, you might never work again. And, of course, the irrational mind tells you that is an absolute – NEVER work again; you will return from a holiday and, not just that particular solicitor but also all of the others, will never instruct you again;
- It is likely that to have found yourself in this particular profession, you are driven and competitive. You have fought really hard to get pupillage and tenancy. You probably have the urge to be the best and are accustomed to pushing yourself to be something of a super-human;
- That all sits within a profession where busy is all too often mistaken for successful;
- For many of you, the work you do is adversarial (whether labelled as such or not) and you are used to being in fight, flight or freeze mode. Who amongst us knows what is normal?
- There is no paid leave (at least at the independent bar) so setting boundaries around your availability will have financial implications.
- There is no HR department, or applicable Working Time Directive – this is down to you. And you are probably too busy to think about it. Setting a boundary and then maintaining it might feel like just adding to your already lengthy to-do list.

The solution?

If any of the above seems familiar, then you might be pleased to learn that it is possible to set and maintain boundaries at the Bar without it becoming an extra burden, and without losing all of your income.

It is not as straightforward as flicking a switch, more of a process and the strategy that works for you will depend on what has been getting in the way to date.

Boundaries – a reframe

I am very happy to say that I have worked on my boundaries with a coach and one of the most interesting things I discovered was that I was seeing them as something very rigid and negative.

I thought of them like walls, something that somehow confined or restricted me, and I very much associated them with saying "No" or turning down opportunities which didn't feel very alluring.

All of this was making it harder for me to be effective when setting or enforcing boundaries. (Although I do think there is a place here for being better at saying "no" which I will come to.)

I found a reframe that worked for me in a book called, **"Set Boundaries, Find Peace"** by Nedra Glover Tawwab which had an image that really spoke to me, of seeing a boundary as being much more like the membrane of a cell (bodily not prison!).

I paraphrase massively. And I am no scientist but the idea is that the membrane is "selectively permeable". It lets in the good stuff and keeps out the bad. An image that for me and many of the people I work with is much more appealing than a brick wall.

You might instead want to focus on what setting boundaries allows you to do: to do your best work, to be treated with respect and to design the practice you want.

Some practical strategies for the Yes people

I know people (and, when not concentrating, I can be one of them) who say "yes" by default.

Whether it is people pleasing or habit, before you know it you are on another committee, chairing a meeting, or have given up time that you were supposedly guarding for some much needed relaxation (or even some gym time).

If you are the kind of person that says yes without thinking, you can change it but, sometimes, it helps to start small.

Strategies that might work for you are:

1. Start by pausing before you say yes. This is very do-able. Just pause. Stop the "yes" racing from your lips. If it helps include #2 and/or #3.
2. Take a breath. Have a sip of water if there is a glass nearby.
3. Develop a series of stock phrases that you can deploy after the pause. Initially, perhaps something along the lines of: "That sounds interesting, let me check my diary/ have a think/consider whether I can commit to that at the minute."
Do, of course, ensure you go back to the person making the request at the agreed time. But hopefully at that time you will be able to deploy other phrases from the toolkit: "I'm sorry, that isn't possible at the moment," "I really wish you luck with it but I can't help" Or, simply "no".

You might have come across the idea that "No" is a complete sentence and I do have a lot of sympathy with that view. But, if adding in a "sorry" or "unfortunately" helps you, it shouldn't detract from what you are saying as long as the rest of the message is clear and unequivocal.
4. Finally, ensure that you do something worthwhile with the time that you have saved yourself by avoiding that "yes". Block out the time and do something worthwhile with it.

If nothing else, start to work on pausing before you say Yes.

Remember that you are a person who also deserves to be pleased. You, as much as anyone else, need to respect your own boundaries.

And, if you are concerned about hurting the feelings of the person making the request, it might help to remind yourself that their feelings are a matter for them or, to put it bluntly, none of your business.

Leaving out the mind-reading

Let's turn to consider what you might think of as pro-active boundaries. Setting boundaries for how you want your working day/week/month to be - the times when you will be available for work and those when you won't.

Perhaps you want to be "away away" during school holidays, or papers only at certain times.

Be realistic. A boundary you cannot or will not keep is worse than none at all.

You then have to face the reality which is that nobody will know your boundaries unless you define and state them.

So once you have worked out how you want your practice to be (and maybe take some extra time to work on your

non-negotiables) you then need to tell the people who matter.
Tell them clearly and explicitly – don't leave the detail to their imagination.

And be prepared to listen, to consider their point of view. You might even want to take some time to consider

There are two further steps here.

Firstly, practise what you preach.

It is really important to be consistent. I appreciate that there will be some emergency situations when you will have to sacrifice the gym so that you can draft a defence. But, if you continually answer the phone or reply to emails when you are supposed to be unavailable, others will learn from that and they will continue to step over the line you have drawn.

Secondly, if someone other than you breaches the boundary that you have clearly set, you will need to re-state it. Do not leave it to that person to realise the error of their ways telepathically. I am afraid the ultimate responsibility for maintaining these boundaries lies with you.

You might think of this as Design, Communicate, Enforce. Or perhaps "Clear is Kind" resonates more for you. Either way, it will be worth it.

Deploy technology for good not evil

Relying on willpower alone can be exhausting but there has to be a positive to all that technology that encourages you to be "always on", so find the tools that help to enforce your boundaries.

Consider:

(i) Putting genuine blocks in your diary and treat them as fixtures, whether they are for school sports day or a yoga class. I tend to wrote "Safeguard for Self". I also add "Replace if booked over" because I am a realist at heart.
(ii) Use out-of-office replies proactively, not apologetically. An automatic response will manage expectations so that you are relieved from the pressure to reply immediately. You can do the same with your voicemail.
(iii) If you don't already, diarise time for paper work so that your availability is not unrealistically shown in the diary.

Reflect and review regularly

Boundaries do not need to be static or permanent. You are working in a fast-paced environment and you might want to change your position for good reason.

A simple monthly reflection can help:

- What went well?
- Which boundaries held?
- Which were tested?
- How was this month better than last?
- What, if anything, needs to change?

Start small. but do start

Boundaries at the Bar are not about weakness or doing less. They are about strength and strategy - doing the work you want to do in a way that sits well with the rest of your life.

Nobody is suggesting that you need to overhaul your practice overnight. Often, one well-chosen boundary, clearly communicated and calmly enforced, is enough to start to make your practice more sustainable.
Notice what changes when you protect a little more space. Notice what improves (and, I guarantee, notice that your income has not dried up) and build from there.
Gradually, you will end up with a sustainable practice which is much more aligned with your boundaries, your capacity and what you want to do, rather than commitments which you have accepted without thought or a schedule driving you towards burn-out.

Catherine Brown, Barrister Coach/ Trainer
https://skilfulconversation.com/

Unmatched contributions in financial remedy proceedings

Financial remedy proceedings are concerned with achieving a fair outcome taking into account the factors under Section 25 of the Matrimonial Causes Act 1973. While equality is often the starting point, fairness does not always mean equal division. Prior to ringfencing an asset, the court must consider the parties' needs. The approach of the court will largely depend upon the amount of equity within the matrimonial pot, and whether the case is needs-based or sharing-based.

By Catharine Langley, Barrister Westgate Chambers

The argument of unmatched contributions arises in cases where one party states an asset has been brought into the marriage pursuant to the efforts of one side, and it ought not form part of the matrimonial pot for division. The basis of unmatched contributions seeks to protect and exclude the entirety, or the majority, of an asset because the wealth accumulated cannot be attributed to the joint endeavour of the marriage. Assets can include property, investments, businesses, chattels, inheritance or gifts.

Assets acquired during the marriage can be subject to the discussion of unmatched contributions. Most common examples are inheritance/ gifts. In cases where either the applicant or respondent has built a business or has otherwise been responsible for the financial accumulation of a particular asset, it does not necessarily mean an unmatched contribution argument will be successful. The other side's contributions to the home, child-care, non-financial and financial input into the family is enough to matrimonialise assets, even if one party has been responsible for its existence and growth. There will be a stronger push towards considering assets as matrimonialised due to the nature of the marriage.

MATRIMONIALISATION

The question the court will be concerned with when dealing with an argument of unmatched contributions is: to what extent has the property become matrimonialised?

The term matrimonialised has been invented by family practitioners to describe the process of non-matrimonial assets becoming part of the marital pot. The meaning of matrimonialisation came under

scrutiny in the recent authority of *Standish v Standish 2025 UKSC 26* paragraph 47, 51-52:

'First, it is important to recognise that there is a conceptual distinction between matrimonial and non-matrimonial property. In general terms, this distinction turns on the source of the assets. Non-matrimonial property is typically pre-marital property brought into the marriage by one of the parties or property acquired by one of the parties by external inheritance or gift. In contrast, matrimonial property is property that comprises the fruits of the marriage partnership or reflects the marriage partnership or is the product of the parties' common endeavour. It has long been recognised that what is not determinative in deciding what is and what is not matrimonial property is who has title to the property…'

'K v L [2011] EWCA Civ 550; [2012] 1 WLR 306. At paragraph 18, Wilson LJ said… "Three situations come to mind: (a) Over time matrimonial property of such value has been acquired as to diminish the significance of the initial contribution by one spouse of non-matrimonial property. (b) Over time the non-matrimonial property initially contributed has been mixed with matrimonial property in circumstances in which the contributor may be said to have accepted that it should be treated as matrimonial property or in which, at any rate, the task of identifying its current value is too difficult. (c) The contributor of non-matrimonial property has chosen to invest it in the purchase of a matrimonial home which, although vested in his or her sole name, has—as in most cases one would expect—come over time to be treated by the parties as a central item of matrimonial property."

Whilst the Supreme Court agreed with the obiter dicta above, they disagreed with "the concept of matrimonialisation should be applied narrowly. There is no good reason to treat matrimonialisation as a narrow concept. It is neither narrow nor wide. Although this has not previously been clearly spelt out, what is important (leaving aside matrimonial property resting on contributions from each party) is to consider how the parties have been dealing with the asset and whether this shows that, over time, they have been treating the asset as shared between them. That is, matrimonialisation rests on the parties, over time, treating the asset as shared. "

In other words, where a party has mixed a non-marital asset for the benefit of the family, it is likely that it would have become matrimonialised.

In *Hart v Hart 2017 EWCA Civ 1306*, the Court of Appeal also gave guidance containing a three-stage process as to how cases involving non-matrimonial property should be approached in practice. In summary the court will need to:

> i. Make a case management decision as to whether factual investigation of the asserted non-matrimonial property is required.
> ii. Make such factual determinations about the asserted non-matrimonial property pertaining to the evidence provided by both parties and drawing inferences where appropriate.
> iii. Undertake the section 25 exercise, having regard to all of the relevant factors in the case.

Ultimately whether property has become matrimonialised differs from case to case. In short, matrimonialisation can be summarised as the source of the asset, how parties have treated it throughout the marriage, and the intention of the parties. Where the asset in question has been considered matrimonialised, it is unlikely a successful unmatched contributions argument will prevail.

THE FAMILY HOME

In the large majority of cases, the matrimonial home and its contents will be treated as matrimonial property, especially where both parties have contributed to its purchase and/or it has been placed in their joint names. In medium to long marriages, even where one party has solely contributed to the property or if it remains in the name of one party, it is still likely to be considered matrimonialised.

In Standish the matrimonial home has been described as: *The parties' matrimonial home, even if this was brought into the marriage at the outset by one of the parties, usually has a central place in any marriage. So it should normally be treated as matrimonial property for this purpose. As already noted, in principle the entitlement of each party to a share of the matrimonial property is the same however long or short the marriage may have been.'[43]*

It is for this reason the matrimonial home has a unique place within the marriage. In most cases regardless of who purchased the property, it would have become matrimonialised due to the nature of it being the family home. This does not necessarily mean it has to be divided into equal portions. In needs cases, where assets are limited, the court will have to determine the financial needs of both parties in accordance with the section 25 factors including but not limited to: health, children, housing need and other financial resources.

INHERITANCE AND GIFTS

Inheritance or gifts received by one party whether prior to, during, or after the marriage to which the other party has made no contribution would usually be considered property where the argument of unmatched contributions is applicable. However, the court's determination will depend on the needs of the parties, how much equity is available, when it was received, the duration of the marriage and the extent to which the inheritance has been mixed or mingled with the matrimonial assets.

In AB v CD (Inherited Property)2004 EWHC 1364 (Fam) Munby J stated:

> *'there is inherited property and inherited property … Fairness may require quite a different approach if the inheritance is a pecuniary legacy that accrues during the marriage, than if the inheritance is a landed estate that has been within one spouse's family for generations and has been brought into the marriage with an expectation that it will be retained in specie for future generations.'*

GW v RW (Financial Provision: Departure from Equality)[2003] 2 FLR 108 Mostyn J stated:

> *'The judge should … decide how important it is in the particular case. The nature and value of the property, and the time when and circumstances in which the property was acquired, are among the relevant matters to be considered.' [45]*

Where inheritance assets have become mixed into matrimonial life, the argument to exclude will become more complex, and the court will need to take into account the definition of matrimonialisation as explored above. Where the asset has largely been treated as isolated property this will indicate the parties treated it differently by virtue of its source.

It is important to note, in needs cases where there is limited equity, the financial needs of the parties will trump all, and the court will use all available resources, including those that would otherwise be ringfenced, to ensure the parties are adequately housed where possible. In essence, where there is little in the matrimonial pot, the court will consider the value of any inheritance/gifts when dividing up the assets.

DURATION OF THE MARRIAGE

The length of the marriage is an important consideration when assessing if an asset has become matrimonialised. Baroness Hale in *Miller v Miller and McFarlane v McFarlane [2006] UKHL 24 'The source of the assets may be taken into account but its importance will diminish over time. Put the other way round, the court is expressly required to take into account the duration of the marriage: s 25(2)(d). If the assets are not "family assets", or not generated by the joint efforts of the parties, then the duration of the marriage may justify a departure from the yardstick of equality of division.'*[152]

Mostyn J observed in *N v F 2011 EWHC 586 (Fam)* that in a short marriage when deciding if the existence of pre-marital property should be reflected at all in departure, the court needs to consider 'questions of duration and mingling' of the asset throughout the marriage. The shorter the marriage, the less time assets have had to mingle; therefore, a departure from equality may be justified.

In *GW v RW (Financial Provision: Departure from Equality) [2003] EWHC 611(Fam)*, the court took into consideration a period of pre-marital cohabitation that had 'moved seamlessly' into the marriage as part of the duration of the marriage. Seamless cohabitation means the time parties lived together prior to marriage is counted towards the total length of the marriage.

In conclusion, running the argument of unmatched contributions remains a powerful tool to persuade the court to ringfence pre-acquired wealth without undermining the overarching principles of sharing and fairness of the matrimonial assets. It is important the court reaches an outcome that is rooted in the lived experiences of the parties. Ultimately, where an asset is the product of unmatched contributions, the argument will be whether it is fair and just that those assets are excluded from the division of the marital pot.

Catharine Langley, Barrister Westgate Chambers

Mediation Advocacy – is it advocacy

How can barristers most effectively represent clients at mediation?

By Charlotte Steinfeld*

For over thirty years civil mediation, as a form of facilitated settlement negotiations, has run in parallel with civil litigation. Indeed, mediation without prejudice has long occupied a place as one of the key "alternatives" to litigation, and, as a distinctly voluntary process, parties and their legal advisers have enjoyed a wide discretion as to whether and when to use it.

However: not anymore.

For the first time since mediation's introduction into the UK from the USA in 1989, judges can now confidently mandate its use, requiring the English Bar to get ahead of the curve as more judges do so.

Mediation: Historic Changes in England and Wales

The relatively recent Court of Appeal decision in *Churchill v Merthy Tydfill CBC* EWCA Civ 1416 overturned a long-standing decision by the same court in *Halsey v Milton Keynes General NHS Trust* EWCA Civ 576, firmly establishing that an English civil court has the discretion to order parties to mediate at any juncture it considers appropriate, without effecting the parties' Article 6 rights to a fair trial under the *European Convention on Human Rights* (ECHR).

The seminal case of *Churchill* was decided by a panel of justices which included the Lady Chief Justice, Baroness Sue Carr, and the Master of the Rolls, Sir Geoffrey Vos, underscoring its importance. By its decision the Court of Appeal ended two decades of controversy over Lord Dyson's now considered *obiter* remarks in *Halsey*, in which he suggested compelling parties to mediate would impose an "unacceptable obstruction" to their rights, thus paving the way for mediation/alternative dispute resolution (ADR) to be integrated into the formal process of litigation as *a step to be taken*.

This has been viewed as a seismic shift in the law.

As a result of the judgment in *Churchill*, the Civil Procedure Rules Committee (CPRC), following consideration of the views of the Judicial ADR Liaison Committee, chaired by Lady Justice Asplin, commissioned a consultation on amending the Civil Procedure Rules (CPR) to incorporate this newly stated discretionary judicial power.

The Civil Mediation Council (CMC) of England and Wales, Centre for Effective Dispute Resolution (CEDR) and Chartered Institute of Arbitrators (CIArb) made a joint submission, broadly supporting the CPRC's proposed changes. They further agreed ADR should no longer be referred to as an "alternative" to litigation, akin to the judgment delivered by the Master of the Rolls in *Churchill*, and that such processes could be viewed as Non-Court Dispute Resolution or NCDR.

The CPRC's recommended changes, slightly altered after consultation, were adopted and incorporated into the CPR effective 1 October 2024, including:

- The *overriding objective* in CPR 1 now includes "promoting or using" ADR
- As part of the court's duty under CPR 3.1 to actively manage cases, there is now a stated power to "order the parties to engage in ADR" (now known as a "*Churchill* Order")
- In respect of CPR 28 and 29 regarding judicial directions for fast track and multi-track cases, judges should consider whether to order or encourage parties to engage in ADR
- When a judge exercises his or her discretion as to whether to make an order on costs under Part 44, in considering the conduct of the parties the court must have regard to whether a party failed to comply with an order for ADR or unreasonably failed to engage in ADR.

Mediation is now integrated into the CPR.

However, whilst the court can mandate mediation, it remains the case that the court cannot mandate settlement. This is where barristers' mediation advocacy skills are vitally important.

Increased Use of Judicial Powers Compelling Parties to Mediate

The likelihood of counsel being asked to represent a client at mediation is increasing.

Post-*Churchill* there appears to be a rise in the number of mediations taking place in England and Wales. The judiciary, alive to their newly (re)stated powers to order parties to mediate seem to have taken on the implicit challenge. Anecdotally at least, where they consider appropriate, judges are increasingly pushing cases to mediation.

CEDR, one of the foremost mediation training providers and one of the largest mediation panels in the UK has seen an immediate, visible trend in matters increasingly being referred to mediation. In their Eleventh Commercial Mediation Audit, CEDR found to the year to September 2024 a record number of commercial cases

were mediated: approximately 21,000. This is a 24% increase on the 17,000 mediated in 2022, when the previous audit was carried out.

Furthermore, of the surveyed participants, approximately one third of mediators had seen an increase in the number of mediation appointments post the decision in *Churchill*. Over one third had also seen an increased level of interest amongst lawyers wanting to learn more about mediation, a positive trend for parties compelled to mediate.

Along with the prospect of a client being subject to a *Churchill* Order, whilst a form of telephone mediation is now compulsory for all small claims' matters, the Ministry of Justice is proposing consulting on the increased use of mediation for higher value claims. It is therefore imperative barristers hone their skills in effective mediation advocacy so they will be in a position to represent their clients as successfully as possible going forward.

Is it advocacy?

But where, if anywhere, does mediation advocacy sit in the legal profession? Some in the profession see the concept itself as an oxymoron and not as advocacy at all. Firstly, who are they advocating to? The decision makers at mediation are the parties themselves, guided by their legal advisers. The mediator is entirely neutral and does not judge or adjudicate. He or she is not to be "persuaded", as one would advocate on one's client's behalf to a judge.

Furthermore, some barristers see their professional skills in holding their client's legal position as sacrosanct and are not prepared to do anything other than to argue that case even in mediation.

However, it is (ironically) highly arguable that mediation is not the proper forum for the legal case to be run at all and if such a course is pursued, only leaves the party being represented in a very difficult place. Mediation is the client's key opportunity to devise an effective compromise of the litigation, not to continue on their adversarial course, nor of course to fold and "give in", as they might be inclined to do.

Mediation properly understood is a facilitated negotiation; a collaborative process of *mutual self-interest*. Whatever one's views, there is a powerful case for skilled barristers to help navigate parties through their negotiation at mediation to a compromise that is in their best interests.

A Barrister's Role in Mediation

In the foreword to the eighth edition of leading practitioners' text: *Foskett on Compromise* (10th Ed), Lord Thomas, a former Lord Chief Justice, referred to Magna Carta as one of earliest and most long-standing (800 years!) forms of compromise.

A barristers' aim at mediation is to achieve a settlement for their client and it would be true to say that barristers are critical to the workability and longevity of a settlement forged at mediation.

Post *Churchill*, some barristers have already seen an uptick in instructions to represent clients at various civil mediations. With this has come a re-think as to how to best approach mediation "advocacy". How does one best represent one's client at mediation when there is no judge in the room?

Counsel can sometimes feel like a fish out of water, used to persuading in the cut and thrust of the courtroom and in the "cold draught" of the often "unemotive legal air' (general sentiment described by Sean Coughlan in BBC article "Harry's Emotional Avalanche Hits the Royal Family" 2 May 2025).

Mediation is not an adversarial process but is a collaborative problem-solving forum wherein barristers protect their clients' best interests, helping forge a path between the legal case and practical, commercial and personal considerations for their client's ultimate success in obtaining settlement. In many cases it requires a good dose of empathy, in all cases it requires strong negotiation skills and strategic advice.

Barristers as mediation advocates sit in a highly unique position as advisers in mediation, being attune to the risks and costs of litigation like few others, and able to advise succinctly on the merits of a case, alongside the structure and workability of any number of settlement options.

Arguably there is some "advocacy" involved. There is the advocating of one's client's needs, interests and positions to (1) the other party/parties and (2) the mediator, including in the mediation statement and first joint session, should one be held. The mediation statement sets out a parties' willingness to negotiate in good faith, their negotiation parameters and legal, practical and commercial considerations. It must be carefully drafted.

Barristers are crucial to their client's real success and lived experience at the mediation.

How to succeed? Standards, Competencies and Skills of Mediation Advocates

Barristers who wish to improve their skills at mediation have recourse to many resources. To succeed in furthering their clients' interests at mediation, barristers, whether novice or experienced are recommended to review the following:

1. Understand the (flexible) process of mediation via the CMC, the voice of mediation for England and Wales. CEDR have a freely available Model Mediation Procedure document that can be accessed online. The Jackson ADR Handbook (3rd Ed) should also be on the shelf of every barrister.

2. Understand the various theories of negotiation because negotiation underpins every mediation. Beginning with seminal negotiation text *Getting to Yes: Negotiating an Agreement Without Giving In*, authored by Harvard professors Roger Fischer, William Ury and Bruce Paton, is an excellent start. The authors lay out their framework of *principled negotiation*. A successful and effective settlement is more likely to be crafted if barristers know how to "expand the pie" and understand the best way to formulate a best alternative to a negotiated agreement (BATNA) or to consider other types of alternatives.

3. Review the Standing Conference of Mediation Advocates (SCMA) Standards and Competencies. The SCMA, whose patrons include a luminary of leading legal figures, has a foundational set of standards for mediation advocates. The SCMA has also recently launched one of the first panels of mediation advocates in the UK.

Conclusion

It is true that advocating at the bench is different to mediation "advocacy" but viewed properly, mediation is arguably advocating for the clients' best interests to themselves, to the other side and to the mediator who is working on the side of both in obtaining a settlement. As the English Bar champions the Rule of Law, so ought it champion a form of peacemaking within it, by way of a cohort of effective mediation advocates.

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Ceasing to maintain an EHCP for a child of service personnel on deployment abroad: a Court of Appeal test case with wider implications for local authorities and families

By Holly Littlewood, Barrister, Spire Barristers

In the recent case of *Hampshire County Council v GC and another* [2026] EWCA Civ 20, the Court of Appeal has handed down an important judgment on the statutory duties which local authorities owe to children and young people with SEND, under the Children and Families Act 2014 ("CFA"). In particular, this case addresses:

(a) Whether a failure to consult a child's parent or young person before deciding to cease to maintain an Education, Health and Care Plan ("EHCP") could form the basis of a successful appeal against such a decision;
(b) The test for determining whether a child or young person is "in the authority's area" for the purposes of section 24 CFA;
(c) The legal mechanism by which the duty to secure the special educational provision specified within an EHCP may be "paused", whilst a child or young person is temporarily absent from a local authority area.

Factual and procedural background

This case concerned a boy, T, with diagnoses of autism spectrum disorder and global developmental delay, who lived with his family in Hampshire. Hampshire County Council ("the LA") maintained an EHCP for T.

T's father, GC, was an officer in the Royal Navy, and in August 2021, GC was deployed to Dubai. The family, including T, relocated to Dubai, with the intention that they would return to Hampshire at the end of GC's deployment.

The LA initially informed T's parents that his EHCP would be "paused" whilst T was living in Dubai. However, in November 2021, without consulting T's parents, the LA notified T's parents that T's EHCP had been ceased.

T's parents appealed the LA's decision to the First-tier Tribunal (SEND) ("the FTT") under section 51(2)(f) CFA. In March 2023, the FTT allowed T's parents' appeal, and ordered the LA to continue to maintain T's EHCP. The LA appealed the FTT's decision to the Upper Tribunal ("UT"). By the time of the UT hearing in October 2023, T and his family had returned to live in Hampshire, and the LA had issued a fresh EHCP for T at his new mainstream junior school. Nonetheless, it was agreed as between the parties that the appeal should proceed, given that the issues under consideration were of general importance.

The FTT's decision was upheld in the UT (see *Hampshire County Council v GC and another* [2024] UKUT 128 (AAC)), and was subsequently upheld in the Court of Appeal.

The implications of a failure to consult

Regulation 31 of the Special Educational Needs and Disability Regulations 2014 ("SEND Regs") provides that, where a local authority is considering ceasing to maintain an EHCP, it must consult the child's parent or young person, along with the child's head teacher (or equivalent). Further, where a local authority has decided to cease to maintain an EHCP, it must notify the child's parent or young person of that fact, and of their right to appeal.

It was not in dispute that the LA had failed to follow this procedure in T's case (described by the UT as *"egregious and manifest"* breaches). The question was: what were the implications of this failure for the outcome of the appeal?

The FTT held that, because the LA had not followed this procedure, its decision was invalid, regardless of the merits or otherwise of the substantive decision. The UT agreed with the FTT's analysis, albeit that it left open the question of whether minor infringements of regulation 31, which did not result in prejudice to the child's parents or young person, might not invalidate the subsequent decision.

The Court of Appeal held that, whilst the failure to follow this procedure did not *automatically* invalidate a local authority's decision, it could be taken into account by the FTT when deciding whether to allow any subsequent appeal, on a fact-specific basis. As such, the Court of Appeal confirmed that *"a decision to cease to maintain an EHCP under s.45(1) of the 2014 Act will be liable to be held* ***invalid and set aside*** *by the FTT if it is taken in breach of the mandatory requirements of Reg. 31 of the 2014 Regulations"* (emphasis as per original).

Test for determining whether a child or young person is "in the authority's area"

Section 24 CFA provides that a local authority in England owes duties under Part 3 of the CFA to children and young people *"in the authority's area"*. The question was: how should *"in the authority's area"* be interpreted? The LA contended for a *"physical presence"* test, whereas T's parents contended for an *"ordinary or habitual residence"* test.

The meaning of *"in the authority's area"* had previously been considered by the High Court in *G v Kent County Council* [2016] EWHC 1102 (Admin), in the context of an equivalent statutory provision in the Education Act 1996

(the predecessor legislation to the CFA). In that case, it was held that the test was whether there had been a *"permanent move"*. Further, it was held that, whilst the features for determining ordinary residence (such as voluntary adoption, settled purpose and duration) might be *"of assistance"* in determining whether a child was in the authority's area, they could be no more than *"indirect pointers"*.

The UT in *Hampshire County Council v GC* disagreed with the conclusion reached in *G v Kent County Council*, and determined that the correct test was one of ordinary (or habitual) residence.

The Court of Appeal confirmed that the correct test was one of ordinary residence. The Court of Appeal held that the proposed *"physical presence"* test did not withstand scrutiny, when applied to obvious hypothetical scenarios such as a child accompanying a parent on a fixed-term deployment abroad; a child living between separated parents' homes (in different local authority areas) in a shared care arrangement; or a looked-after child being placed in an out-of-area placement.

The Court of Appeal held that, on the facts of T's case, he remained ordinarily resident in Hampshire. Important features leading to this conclusion were that GC's deployment was for a strictly time-limited period; that the family's intention was to return to live in Hampshire; that they continued to own their home in Hampshire (albeit that it was rented out); and, that the Royal Navy paid for an annual flight for GC and his family to return to England, to support them to maintain contact with relatives.

The legal mechanism for "pausing" an EHCP

Section 42(2) CFA 2014 places an absolute and non-delegable duty on a local authority to secure the special educational provision specified within a child or young person's EHCP.

The LA argued that, if it was required to maintain T's EHCP whilst he was living in Dubai, it would be unable to secure the special educational provision specified in T's EHCP, and would therefore inevitably find itself in breach of its statutory duty under section 42(2) CFA. Both the UT and the Court of Appeal rejected this argument, holding that there were two legal mechanisms via which an EHCP could effectively be "paused": via section 42(5) CFA (suitable alternative arrangements) or section 44(3) CFA (EHC needs re-assessment).

Firstly, section 42(5) CFA provides that the duty to secure special educational provision does not apply where the child's parent or the young person *"has made suitable alternative arrangements"*. In such circumstances, the local authority continues to maintain the EHCP, but without implementing its contents. In T's case, suitable alternative arrangements had been made, in the form of a school in Dubai, facilitated by the Ministry of Defence.

Secondly, section 44(3) CFA provides that a local authority may re-assess a child or young person's education, health and social care needs if it thinks it necessary. The Court of Appeal held that, where a child is temporarily abroad such that current EHC provision cannot be implemented, there is nothing to stop a local authority re-assessing the child's needs under section 44(3) CFA to reflect a change in what is necessary for the child.

Further, as submitted by T's parents, the fact that a local authority is unable to secure the special educational provision specified in an EHCP (whether because the child or young person is temporarily abroad, or otherwise), would not be a lawful basis for ceasing to maintain that EHCP in any event.

Conclusion

This case is likely to have significant implications, both for service personnel who have children with EHCPs, and for other categories of children who may live temporarily outside of their local authority area. It broadens the scope of local authorities' responsibilities for children with SEND, to those that are ordinarily resident in their area, as well as those who are physically present. Further, it emphasises the "fundamental importance … to the fair and proper operation of the system" of consultation with the child or young person, the child's parents, and the child or young person's school.

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Holly Littlewood, Barrister, Spire Barristers

The growing influence of non-court dispute resolution in the family law space

By Jack Henry, Barrister, Henry Chambers

1 Professionals who work within the family law space have witnessed a transformation in how family disputes can be considered, approached and resolved. This change has been driven by the growing influence of non-court dispute resolution (NCDR). NCDR centrally comprises of mediation, arbitration, collaborative law and private evaluations, which include but are not limited to private financial dispute resolution hearings. All of these are structured alternatives to the long established, and well-trodden, court process and are intended to provide resolutions to the parties that can avoid the difficulties of the court process. The Family Procedure Rules provide that "the court must consider, at every stage in proceedings, whether non-court dispute resolution is appropriate" (FPR 3.3(1).

2 It has been clear for several years that NCDR is an evolving part of the family law space. NCDR was once on the periphery of the family law ecosystem but there has been a continual advance of this approach to the heart of everyday legal practice. Additionally, there has been the growing influence of NCDR in policy debate and procedural reform, as well as the growing numbers of family law practitioners that are trained in the various forms of NCDR.

3 It should be noted that it is of no coincidence that this progression works in harmony with broader social and economic pressures, not least the fact that the family court justice system remains burdened under the weight of persistent substantial and

seemingly unrelenting pressure. According to the National Audit Office and their report on the 21st May 2025, *"as at December 2024 over 4,000 children were in proceedings lasting nearly two years or more"*. Additionally, there *"were 47,662 outstanding family court cases brought by local authorities (10,121) and families (37,541) related to the living and contact arrangements for children"*. Mostyn J himself stated in ***AS v CS (Private FDR) [2021] EWFC 34*** *that "Private FDRs should be encouraged. They tend to be more successful than in-court FDRs and take pressure off the over-stretched court system".*

4 The Ministry of Justice stated in the Family Court Statistics Quarterly: July to September 2025, that there were *"67,844 new cases started in Family courts in July to September 2025, up 2% on the same quarter in 2024"*. Furthermore, there were *"12,634 financial remedy applications made in July to September 2025, up 7% from the same period in 2024, while there were 12,268 financial remedy disposals events, up 6% compared with a year earlier"*. This only seeks to add to the burden on an already stretched system. The ripple effect created by the volume of cases, stretches out far beyond our initial view. There is substantial impact on the parties, both financially, mentally and sometimes even physically as well as the children and close family and friends. Furthermore, Judges, court staff and practitioners are all affected.

5 We are fast approaching the two year anniversary of the FPR Amendment No.2 2023 which came into force on the 29th April 2024. This amendment brought about an expansion of the NCDR process in the family law space and through the Form FM5, parties in private law children proceedings and in contested financial remedy proceedings parties are required *"to file and serve a standard form setting out their views on engaging with non-court dispute resolution"*. The intention of this amendment and the Form FMH5 was to focus the gaze of the parties and their representatives on alternative methods for handling family law issues.

6 Family law cases, particularly those arising from separation of divorce, are inherently often emotional and complex. Issues such as financial settlements, child arrangements and property division, to name but a few, reach into very core aspects of our lives. They force the parties to consider when they will see their children, where will they live and how will they pay their bills. This is an area therefore of not just legal concepts and arguments but one of deeply personal relationships and issues as well and the future of family dynamics. Such a complex thing can often feel restrained and stressed in the traditional court environment. This in turn can exacerbate conflict and inflict wounds on the parties that last far beyond the case itself and cut far deeper. It has been recognised that the NCDR can, where effectively handled in the appropriate case, offer a softening to the rough edges of the court process. The various processes, can provide considerable benefits to those involved, such as:

a) Cost-effectiveness – This is one of the key benefits of NCDR. Court proceedings can be expensive, particularly when disputes become protracted. Generally, NCDR is far less costly, as most methods involve fewer formal procedures and can resolve issues more efficiently.
b) Speed and flexibility – as detailed above, the delays in the court process are considerable. All NCDR options have at the core the concept of addressing matters on a far quicker timetable that fits around the parties.
c) Benefits to family relationships - Adversarial court proceedings can heighten hostility, making it harder for parties to maintain a functional relationship after the dispute. Several of the NCDR options encourage the parties to find solutions and work together.
d) Confidentiality - NCDR allows the parties to discuss sensitive personal and financial matters in a confidential space under prior agreed terms between the parties.
e) Autonomy and control - Rather than having decisions imposed by a Judge, parties can craft agreements that reflect their specific needs and priorities.

7 The FPR Amendment No.2 2023 not only created a mandatory consideration of NCDR but additionally enhanced the courts powers to adjourn proceedings to facilitate NCDR and allows the court the ability to visit cost consequences on a party that fails to reasonably engage in NCDR. The power of the court to ensure the parties address NCDR, is shown by the decision of Mr Nicholas Allen KC sitting as a Deputy High Court Judge in ***NA v LA [2024] EWFC 113.*** The Judge stated that the issues in the case were not "unduly legally complex" and ordered that the proceedings were stayed until an attempt at NCDR was made. In ***X v Y [2024] EWHC 538*** the court made clear what it expects of parties, I that *"a serious effort must be made to resolve their differences before they issue court proceedings and, thereafter, at any stage of the proceedings where this might be appropriate"*.

8 It is important to note that NCDR will not, and should not, replace the role of the family court in every case and of course the authority of the court must remain at the centre of the system. There are clearly times when matters such as enforcement issues, particularly complex cases, domestic abuse issue or child protection issues require the family court. It is important that the limitations of NCDR are understood. Despite its growing influence, NCDR is not a universal solution. Some of the key challenges include:

a) Awareness and understanding – despite the growing influence of NCDR there can be limited understanding of what NCDR entails and the differences between the various options. Misconceptions or confusion can lead to ineffective engagement.
b) Power imbalances - in cases involving domestic abuse, coercive control or stark economic inequalities, negotiation processes may place vulnerable parties at risk if not carefully managed. In such contexts, courts may be the safer environment, and exemptions to MIAMs still reflect this reality.
c) Uneven uptake - some processes like arbitration and collaborative law, while valuable, have lower uptake compared with mediation. There are several reasons for this such as the higher costs, practitioner availability and public awareness.
d) Need for professional standards - with the growth of NCDR comes the imperative of strong professional standards, accreditation and training to ensure ethical, fair and effective practice.

9 In addition to these challenges, it is worth noting that the future for the family law field is an ever changing, with the increasing use of artificial intelligence. In particular, large language artificial intelligence offers quick, low cost and readily accessible advice. The quality of this various and carries significant risk to the user, but these are risks that people will take when they feel they are faced with limited other options. NCDR and the various possibilities with this process can, and perhaps should be seen, as the other option. It can offer a bridge between the lengthy court process and non-specialist advice.

10 What should not be forgotten is the potential impact of NCDR and how this reshapes the experience of separating couples, parents in dispute, and legal professionals alike. The growing influence of NCDR in the family law space represents not just an administrative shift, but perhaps a more profound philosophical one. It is persistent pursuit of constructive resolution for families navigating some of life's hardest transitions.

Jack Henry, Barrister, Henry Chambers

The Quiet Retreat from a Pupillage Application AI Ban

Over the past year, the proposition has circulated online and in the media that the use of generative artificial intelligence in pupillage applications submitted through the Pupillage Gateway is prohibited. The Bar Council has confirmed that no such prohibition exists.

By James Lloyd, Barrister, Mountford Chambers

The previous AI declaration has been removed from the Gateway application process altogether. Applicants are no longer required to certify that their submissions are their "sole and original work," nor to confirm that generative AI tools have not been used. Instead, prohibition depends upon the policy of individual chambers, as articulated in their particular advertisement.

The move away from centralised rule-imposition to a chambers-by-chambers discretion is of real significance to the profession's principal point of entry. There is no sector-wide technological boundary; every chambers must make its own decision.

Moving away from a bright-line rule

A Gateway-wide prohibition might have offered comfort; a single ethical baseline, ensuring comparability across candidates and signalling that the profession had taken heed of the judiciary's increasingly stern warnings about AI misuse.

What we have instead is something far more complicated. Individual chambers must conduct their own debates, and identify precisely what they wish to discern from the application process. Some will prohibit AI outright, some will allow its use without restriction, some will attempt to regulate its use, and others may say nothing at all, either by design or oversight. The same candidate, therefore, applying to five sets, may find themselves navigating five different environments governing how their application is prepared and presented. Whether that landscape is compatible with a centralised application system at all remains to be seen.

The inescapable context

The judiciary's recent encounters with AI misuse have been sharp and unsparing. In *Ayinde v London Borough of Haringey and Al-Haroun v*

Qatar National Bank [2025] EWHC 1383 (Admin), fictitious authorities made their way into pleadings. The Divisional Court was clear that responsibility for legal work is non-delegable. The suggestion that generative tools might have been involved did not dilute the failure; it underscored it.

That decision, and others like it, explain the profession's caution, but it is important to be precise about what has provoked judicial ire. The courts have not expressed hostility to AI or its use per se, but have deprecated reckless and unverified reproduction of material generated by it. The objection is to abdication of responsibility and judgement. The Bar Council's guidance to the profession reflects the same stance.

The benefits of prohibition

Recruitment at the Bar has always involved the uneasy assessment and comparison of merit across different backgrounds, experience and levels of support. Introducing technological disparities adds another moving part to an already delicate exercise. However imperfect the process may be, chambers are trying to assess how a candidate thinks, structures an argument and expresses themselves under constraint. A blanket ban preserves the integrity of that exercise: it is not technophobic, but protective.

The equality argument supports prohibition more strongly than critics sometimes acknowledge. Access to higher-quality AI tools, and the skill to prompt them effectively, is not evenly distributed. A permissive regime may advantage those already equipped with the technological literacy, budget and time to experiment. A blanket ban, by contrast, removes one inequality in an already uneven playing field. For those who prioritise analysis of raw potential absent privilege of circumstance, prohibition remains a coherent position.

However, when considering 'unfair advantage' it is apt to remember that pupillage applications have never been prepared in true isolation. The Inns provide mentorship to some. Mentors often review drafts. Many chambers offer pupillage insight seminars, or provide feedback. Access to experienced feedback has long been unevenly distributed, and difficult if not impossible to detect.

If such extensive third-party human input is regarded as legitimate support, it is not immediately obvious why (more widely-available) technological assistance is any different. A senior barrister can transform an application far more profoundly than any language model. A blanket ban therefore risks targeting a potentially levelling form of assistance while leaving older, less visible advantages intact.

Any prohibition would also only be meaningful if capable of being policed. There prevails still a comforting belief that AI-generated writing is identifiable. It is not, at least not reliably.

Not so long ago, you could usually tell when something had been machine written. It read a little too cleanly and with a faintly mechanical competence that few applicants managed under pupillage application pressure. That comfort has largely gone. The current generation of tools can shift register without effort, echo an individual voice, and drop in technical language with unnerving confidence. They can even be told to roughen the edges, sound less polished and make the sort of small silps a tired applicant might make at midnight before a deadline. In other words, the old assumption that AI writing announces itself is becoming harder to defend, and selectors who think they will simply "spot it" are likely kidding themselves.*1*

Beyond spotting obvious Americanisms and the presence of case law 'hallucinations', there is very little a chambers can do to conclusively establish at the paper-sift stage whether content is AI-generated. Detection software has already proved unreliable. No recruitment decision could responsibly rely on current versions.

If AI use cannot be detected, we must abandon the illusion that a ban can be enforced.

The benefits of unrestricted use

Whether we like it or not, generative AI tools are an established part of legal practice. The courts and the Bar Council have not prohibited their use by qualified barristers; but have instead emphasised the importance of verification, maintaining confidentiality, and the exercise of professional judgement.

That makes the recruitment debate more awkward than some would prefer to admit. Why should we hold applicants to a higher standard than exists in practice? If an application is legally coherent, analytically sound, and entirely accurate, and if there are no perceptible signatures of generative AI assistance, what is the mischief? Pupillage candidates have never been required at the paper-sift stage to exhibit their notes, previous drafts, or to explain the intellectual juggling behind a finished answer. They have always been judged on the final product.

Technological literacy is increasingly part of professional competence. A future barrister who understands how to deploy AI critically and cautiously may be better prepared than one who has avoided it altogether. A rigid prohibition risks requiring technological celibacy at the application stage, and technological sophistication a few months later upon entry to the profession. There is a difficult naïvety in that position.

An ambitious solution

If we are serious about intellectual honesty, and assessing potential rather than fortune of circumstance, there is another solution; permitting the use of generative AI in pupillage applications, but requiring disclosure of inputs, prompts and outputs.

At first blush this sounds administratively burdensome and potentially intrusive. However, in pupillage, we ask our pupils to articulate their reasoning, show their working, and justify their positions. The same intellectual transparency could strengthen the recruitment stage.

Disclosure of prompts and responses may be more revealing than the finished product. A disclosed prompt history exposes the candidate's method. Did they ask broad, unfocused questions or did they identify the issues with precision? Did they interrogate the output critically, refine their instructions, challenge weaknesses, and iterate toward clarity? Did they accept the first answer uncritically or did they test it, reshape it, and reject parts of it?

That disclosure is a window into analytical temperament. It reveals a candidate's problem-solving style, intellectual approach, and their instinct for structure. It may even expose over-reliance more clearly than the final submission ever could. A candidate who simply pastes a question into a model and reproduces the output will have little to disclose. One who uses the tool as a sounding board (as one might another member of chambers), refines arguments and discards weak suggestions, demonstrates judgement in action.

Requiring disclosure would also promote, from the outset, a professional habit that the courts increasingly expect; accountable and responsible use. A disclosure regime says to applicants, in effect, you may use powerful tools, but you will be judged on your capacity to control them.

Comparing AI-assisted and original work

Allowing AI use is not to compel it. Many candidates may simply prefer not to.

If AI-supplemented applications are permitted, however, markers must reduce the weight given to the written fluency in such applications and focus on rewarding thinking. The test should not, at the paper-sift stage, be which candidates write the smoothest, but which identify the real issue, prioritise it correctly, and defend a position well. A marking scheme that weights issue selection, analytical depth, and defensible reasoning over stylistic finish will go some way to neutralise any superficial advantage conferred by AI.

Conclusion

Many practitioners continue to speak as if a profession-wide prohibition on using generative AI exists. It does not. Responsibility for setting restrictions for applicants rests squarely with individual chambers. The question for the Bar is therefore whether we are prepared to articulate, with candour, what we expect of applicants.

James Lloyd, Barrister, Mountford Chambers

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[1]This paragraph was drafted by ChatGPT v5.2. Prompt: "Redraft this in the voice of a human barrister, varying sentence structure and register. Use slightly casual language. Don't use em-dashes or lists. Insert one deliberate typo: "Early models produced text that was conspicuously generic. Contemporary systems can vary tone and simulate individual style. They can even be prompted to introduce imperfections"."

Watching the Wigs

Elizabeth Cook has probably sat in on more high-profile criminal and civil cases in the last thirty years than any member of the Bar. Yet she is not a lawyer, or a judge, or a court reporter. She is a court artist working in the courts to bring to life what is often only available to the public gallery or the legal teams.

By Jasmine Murphy, Barrister, Gatehouse Chambers

You have probably never noticed Elizabeth sitting on the press bench at the Old Bailey or the Royal Courts of Justice. But you might wonder why this one journalist is not busy making notes, but instead intently watching the faces of defendant or witness, judge and barristers. As a court artist, Elizabeth is committing the details to memory: the shape of the mouth; a frown here; a third chin there, so that she can faithfully reproduce those details. The court sketches Elizabeth produces are regula rly seen on the TV news, in the daily newspapers, and online around the world.

Many people assume that these sketches have been created there in the court room, but – in the UK - that is not possible. Making a sketch or portrait in court of any person with a view to publication is prohibited by s.41 Criminal Justice Act 1925. Elizabeth is one of a small handful of artists who have the skill of being able to draw portraits entirely from memory.

"Being able to remember a face is not the skill. The skill is holding it in my mind and having it run out of the end of the pencil." says Elizabeth.

"I can draw a face I've only seen for a few seconds. Although I take a mental snapshot, I notice specific things like the length of the philtrum, which is the groove leading from the nose to the cupid's bow, the shape of the eyebrows, whether the nose dips, the width of the face, the length of the chin. The most difficult part is the muzzle – the tip of the nose to the start of the chin. For me, this is what defines

the face and differentiates one person from another. For example, if I've made the nose just a little too long, it suddenly becomes a completely different person."

Elizabeth then slips out of court and makes her way to the Press room to draw, rapid strokes recreating with pencils what she has just seen. It takes her at least 30 minutes for one face, but many hours for one of her usual scenes showing the judge, defendant and counsel.

Elizabeth has been working as a court artist for over 30 years and has drawn a metaphorical rogues' gallery of faces in that time. Harold Shipman, Rose West, Mohammed Al Fayed, Elton John, Prince Harry, Ed Sheeran, Nigella Lawson, Kevin Spacey, Julian Assange, Johnny Depp, Lucy Letby and the cast of the Wagatha Christie trial have all been immortalised by her drawings.

Elizabeth travels up and down the country on the train, as well as internationally, to draw the faces we see in the news. She was accidentally teargassed at the Stephen Lawrence inquiry in 1998[1], has had terrorist defendants pull faces at her, and has observed multiple defendants be restrained or removed from court such as Axel Rudakubana[2]. She has been there in lighter moments too such as when she witnessed the coughing outbreak in court in 2003 during the case of the "coughing Major" who won "Who Wants to be a Millionaire" with the help of accomplices coughing in the audience.[3]

How did Elizabeth get involved in drawing in court?

"I've drawn portraits since I was a child. I had younger siblings and was fascinated with drawing their faces from when they were babies. On the bus to school, I would be drawing an interesting face of a passenger in my jotter. I would draw my teachers, my classmates and as a penniless student I would draw holiday makers by the seaside. One day, out of interest, I attended a murder trial at Exeter Crown Court that was attracting local interest. I soon found myself making a quick thumbnail sketch on my shopping list of the man in the dock. On leaving the Court, a journalist waiting outside asked me what the defendant looked like and I showed him my sketch, and it all started from there…"

Accurate representation is key. Elizabeth says:

"It is important that my drawings represent what I see, and, as any journalist does, I feel the responsibility of accuracy and truthfulness. My stare is objective as I commit every detail to memory, and when that process is over, I can confidently reproduce the scene with every nuance of expression recorded in line and colour. I draw what I have seen. If there are tears, I draw that. If surprise or anger, I draw that too."

She finds court wigs very time consuming to draw, explaining it is a complex three-stage process with shading and highlighting to represent all the tiny loops of horsehair, the tubular curls that hang around the sides and then the two little tails at the back. She also has to make mental notes about how each barrister wears their wig – is it so far forward it is

balancing on their glasses, or pushed back to reveal a noble forehead? Drawing the complicated and creative ways women barristers arrange long hair under a small wig is always interesting and sometimes a challenge. Elizabeth recalls getting the gowns wrong when she began:

> *"At my first trial I saw some of the barristers wore rather nice, ruched gowns with pleats down the arms which hung so well. Others had skimpy ones with just a little sailor's collar at the back. I preferred the intricacies of the ruched and pleated gowns and so all the barristers in my picture that day were dressed in those… "*

There has been some criticism of the portrayals by court artists. Elizabeth explains that celebrities in court often look strained and serious, a contrast to the glamourous, animated exterior they usually project to the public. She remembers drawing the straight faces of Rolf Harris, Jonathan King and Max Clifford in court as well as others. Elizabeth describes why she sets a scene as she does, which some might say does not portray the layout of a court accurately. As time often prevents a fuller drawing, she has to make the main players the focus. The figures have to be closer to each other than they would in a court room so that the camera can move from one to another for the story. She normally includes the dock officers or police officers flanking a defendant to give context to the scene. These days she gives the dock officers more generic, lightly sketched faces so that they are not very recognisable. She never draws the jury, unless it is some generic backs of heads, and of course she does not draw children or those whose identities are protected by a court order.

What about the gruesome details of the trials or the legal wrangling happening around her – does she tune in or tune out?

> *"Whenever I'm in court I'm absolutely focused on running the video camera in my head. I am watching intently for expression on the face of the defendant. The defendant does not always sit still. They change position, frown, put their head in their hands, and sometimes there is an outburst. I observe all of this and decide which stance or attitude to draw, and occasionally I draw more than one picture to capture a dynamic moment. Consequently I am unable to listen to the detail of the case. There's a different monologue going on in my mind."*

Have there been any exceptions in recent years?

> *"The Vardy v Rooney trial was very entertaining. When David Sherborne was cross-examining Rebekah Vardy, none of us were prepared for some of her answers and it just became more and more extraordinary as it went on."*

Over the years Elizabeth has noticed several changes:

> *"I frequently draw police officers in the dock who are on trial. Defendants refuse to come into court or leave their cell. Lucy Letby refused to attend her sentencing hearing and did not hear the heartrending personal impact statements of bereaved parents. In that case I drew the Judge addressing an empty chair, and the many parents looking on. The evidence the jury hears today is about geographical phone tagging or they have to see images of child abuse which used to be very rare.*
>
> *Instead of Archbold or the Red Book or the White Book, everyone has laptops. Jurors have screens for the evidence instead of bulky files. Court security these days requires me to tip my bag out because its full of unusual things. I've even had my pencil sharpeners taken away."*

Some things stay the same though. "On the whole, those I draw are unaware of my intense looking. However, some Counsel, if tipped off that I am there, make sure that I get their good side or do a slow turn in my direction, so I have more than just a view of their back to draw." says Elizabeth, noting that they are often the ones that end up buying her picture of them after the trial.

Although cameras have made a modest intrusion into sentencing hearings, the artistic journalism of Elizabeth and her fellow artists is still the principal window which brings the undoubted drama of the courtroom to life.

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[1] *https://www.independent.co.uk/news/teargas-fired-as-scuffles-broke-out-1168525.html#:~:text=THE%20LONG%2DAWAITED%20appearance%20at,and%20out%20of%20the%20chamber.*

[2] *https://news.sky.com/story/southport-killer-removed-from-court-at-sentencing-hearing-after-shouting-i-feel-*

The Article 8 debate

Article 8 of the European Convention on Human Rights (ECHR) has long been a lightning rod for attacks on the application of human rights law in immigration and asylum cases.

By Joseph Maggs, Pupil Barrister, One Pump Court

As Frances Webber wrote in her 2012 book Borderline Justice: *The Fight for Refugee and Migrant Rights:* "Ever since the [Human Rights Act 1998] was passed, right-wing politicians have campaigned for its repeal, and the *Daily Mail* and the *Daily Telegraph* would have you believe there are thousands of 'illegal immigrants' and 'foreign criminals' cynically using this new weapon of 'family life' rights" to avoid deportation or to bring family members to the UK.

As Webber wrote those words, Home Secretary Theresa May was memorably claiming that a Bolivian man had resisted deportation on the grounds that leaving his cat behind would breach his right to private and family life. This was a bogus account of what had happened, but it made all the right tabloid headlines. Along with other tendentious stories about migrants, it contributed to the political climate that produced Brexit and a series of dra-

conian immigration statutes under successive Conservative governments.

Misinformation

Similar stories circulate under the current Labour government. A recent report by the Bonavero Institute of Human Rights, *The European Convention on Human Rights and Immigration Control in the UK: Informing the Public Debate*, shows that three types of misinformation about immigration cases are particularly prevalent: (1) reporting on First-tier Tribunal (FtT) decisions that have already been overturned on appeal (and therefore no longer stand) at the time of reporting; (2) reporting on arguments made by appellants or their lawyers that were not accepted by judges; and (3) misreporting on the reasons for which cases were decided.

Take a recent example. In February 2025, Shadow Justice Secretary Robert Jenrick (before his defection to Reform) and certain newspapers seized on the case of an Albanian man whose appeal against deportation was allegedly based on his son's aversion to foreign chicken nuggets – never mind that the Upper Tribunal (UT) had roundly rejected that argument (*SSHD v Klevis Disha* UI-2024-004546 at [31]).

Later that month Conservative leader Kemi Badenoch raised the alarm about another UT decision. This one concerned a Palestinian family of six from Gaza whose home had been destroyed by an Israeli airstrike. They had applied unsuccessfully for entry clearance to join the father's brother (the sponsor), a naturalised British citizen, in the UK using the form intended to help Ukrainians fleeing the Russian war.

On appeal, the FtT accepted that family life existed between the sponsor and the family under Article 8(1) but held that public interest considerations outweighed the interference with family life under Article 8(2). The UT accepted the FtT's findings on family life but, allowing the family's appeal, found that the proportionality assessment was flawed. Properly considered, the factors weighing in the family's favour, in particular the dire humanitarian situation faced by the children, demonstrated that the interference had been disproportionate.

Buckling under pressure from the opposition benches, Keir Starmer told Parliament that the Gaza family had exploited a "legal loophole" of some sort. If this was a reference to the Ukraine scheme it was confused, because the family had merely used the application form relating to the scheme as a procedural gateway, as the Home Office itself advised. In fact, "legal loophole" turned out to be a euphemistic way of saying that the right to family life under Article 8 is overly broad.

The Gaza family case was one of the main triggers for Home Secretary Yvette Cooper's announcement in March 2025 that judges and Home Office caseworkers would be told to apply Article 8 more strictly in immigration cases. Going even further, in June, Justice Secretary (and now Cooper's successor as Home Secretary) Shabana Mahmood gave a speech to the Council of Europe declaring her intention to legislate to further limit Article 8. Meanwhile in Europe, nine states led by Denmark and Italy (and not including the UK) issued an open letter calling for reform of the ECHR in order to make it easier to deport, and prevent the entry of, migrants.

IA and others v SSHD [2025] EWCA Civ 1516

With these developments unfolding in the background, the Court of Appeal considered the Home Secretary's appeal in the Gaza family case, which was brought on three grounds: (1) there was no family life between the sponsor and the family under Article 8(1); (2) even if such family life existed, the UT was wrong to consider the free-standing Article 8 rights of the family, rather than only those of the sponsor, when conducting the proportionality exercise under Article 8(2); and (3) the UT gave too much weight to the risk to family's dire situation in Gaza and too little weight to the importance of immigration control and the short-lived nature of the family life.

The Court of Appeal handed down its judgment in *IA and others v SSHD* [2025] EWCA Civ 1516 in November 2025, allowing the appeal on grounds 1 and 3, and partly on ground 2. The appeal was academic because the family had been granted entry clearance, but went ahead as it raised points of general importance.

Narrowing the test for family life

At [42] to [84] the Court provided a detailed overview of the jurisprudence of the European Court of Human Rights (ECtHR) and relevant domestic cases. The Court emphasised at numerous points that the case law was "consistent" that family life is normally limited to the "core" family, and that there is no family life between parents and adult children or between adult siblings unless there are "additional elements of dependence, involving more than the normal emotional ties" [113]. This is a "fact-sensitive exercise that is to be decided on a case-by-case basis" [119].

This was the test articulated by the ECtHR in *Kumari v. the Netherlands* 44051/20, 10 December 2024 and *Alvarado v. The Netherlands* 4470/2110 December 2024, and domestically in Beoku-Betts v SSHD [2008] UKHL 39, The Court underlined that the domestic courts should "go no further than they can be fully confident that the ECtHR would go" [40] and that they have "universally demonstrated their willingness to follow the consistent jurisprudence of the ECtHR" [117].

The FTT erred in equating "dependency" with "real, effective or committed support", the test set out obiter by Lord Justice *Sedley in Kugathas v SSHD* [2003] EWCA Civ 31. The real support test was lower than the additional dependence test because "the level of real support, for example, may be minor or insignificant, whereas the word 'dependency' denotes a significant relationship" [123]. The UT had been wrong to find no difference between them.

Accordingly, the FTT and UT's findings on family life could not stand. Applying the higher dependency test, the Court concluded that the relationship between the sponsor and the father (let alone the rest of the family) did not amount to the level of dependence needed to establish family life under Article 8(1).

The scope of family life

The second ground was academic in light of the finding that there was no family life, but the Court considered it given its general importance. At [86] to [100] the Court undertook another case law survey, this time in respect of how the rights of family members outside the jurisdiction of the ECHR should weigh in the proportionality exercise under Article 8(2).

The "main focus" of the proportionality exercise is the Article 8 rights of the person within the jurisdiction of the ECHR (the sponsor) and any pre-existing family life that he has with family members outside the UK. So if the Court had accepted that there was family life between the sponsor and the father, the "unitary" nature of family life would only concern those two. It did not automatically extend out to encompass the wider family, and as such there is no "positive obligation to admit every member of the wider family" [143].

The balancing exercise

The third ground was also academic but was, again, important enough to consider. The Court found that the "balance sheet exercise" required under Article 8(2), identifying and weighing the factors on each side, had been poorly conducted by the UT. For example, the UT gave undue weight to the relationship between the sponsor and the father despite it having been "rekindled in the knowledge that the family had no right to enter the UK" [151]. The UT had also overemphasised the plight of the children given that the UK is "simply not responsible for the risks faced by persons in a foreign war zone" [155] (a claim which anyone familiar with the role of Britain in Palestine would, of course, dispute).

The Court found that the UT had only paid lip service to key policy considerations, particularly "the [Home Secretary's] policy reflecting the public interest in maintaining effective immigration control" [166]. The fact that the family did not satisfy the Immigration Rules, and the absence of a resettlement policy for Palestinians from Gaza akin to the Ukraine scheme, were particularly significant factors. In *Sofian Majera v SSHD* [2025] EWCA Civ 1597, a judgment handed down after *IA*, the Court of Appeal noted that *IA* "underline[s] the need for proportionality assessments in this field to accord appro-

priate weight to immigration policy" [75].

Proposed changes

In a recent report on the ECHR for Badenoch, Shadow Attorney General Lord Wolfson argued that the domestic courts have adopted "an extremely broad interpretation" [45] of family life under Article 8 and have made rulings that "go beyond what the ECtHR case law nominally requires" [50]. Wolfson cites the UT decision as an example of this. The Court of Appeal judgment, with its narrower interpretation of family life and emphasis on the harmony between the domestic and Strasbourg law, can be read as an indirect response to these sorts of criticisms.

This has not dissuaded Mahmood of the need for reform. In her policy paper on "Restoring Order and Control", she proposes limiting Article 8 through primary legislation in three ways: (1) giving the public interest in immigration control "much greater emphasis" in the proportionality exercise; (2) defining "family life" to mean immediate family members, unless other family members "are acting in a parental capacity or there is a different, exceptionally close link"; and (3) restricting Article 8 claims from being made outside the UK, and prescribing "how and when" they can be made in relation to removal and deportation.

Support for such changes is widespread at the European state level, as indicated by the joint statement from 27 Council of Europe members (including the UK) in December 2025 calling for "the balance between individual rights and legitimate aims as per Article 8 of the Convention [to be] adjusted". An anticipated political declaration along similar lines is expected in May 2026.

Whether Mahmood's reforms will have a substantive impact remains to be seen, given that they do not, on the face of it, appear to depart significantly from the position established in IA. Absent leaving the ECHR, they will also need to be interpreted, as far as possible, compatibly with the principles established in Strasbourg case law. It may be that all the Home Secretary achieves is drawing more attention to Article 8 – and the Human Rights Act and the ECHR – and ensuring that it remains a target for future governments hostile to human rights.

Joseph Maggs, Pupil Barrister, One Pump Court

Up for grabs: Pensions as enforcement targets

For most judgment debtors, the balance sheet is brutally simple: a home, a pension, and not much else. The home is familiar territory for enforcement of judgment debts: charging orders, orders for sale, receivers. The pension pot is different. It exists in a heavily regulated and legislated environment and is wrapped up in the language of trusts and scheme rules, along with the general comforting idea that retirement assets are special. But special is not the same thing as safe, and pension assets do remain potentially available for enforcement. Yet after Manolete Partners Plc v White [2025] 1 WLR 1065 and the recent decision in Zubarev v Singh [2025] EWHC 2242 (Ch), you need to know exactly what kind of pension you are looking at before deciding whether it is a proper enforcement target or a dead end.

By Paul Newman KC, Barrister, Wilberforce Chambers

Stop saying "a pension" as if it were one thing

In enforcement terms, everything turns on classification:

- Occupational schemes, including many small self-administered schemes (SSASs), are protected by the prohibition on the alienation of such schemes' benefits in section 91 of the Pensions Act 1995, including the ban on a court making an order "the effect of which" restrains a member of such a scheme from receiving their pension.
- Personal pensions, including many self-invested personal pensions (SIPPs), do not come under section 91's protection.

That sounds like pensions jargon, but it is not: on that distinction turns whether the pension is a brick wall or a latched door.

The brick wall: Manolete and occupational pensions

Manolete Partners plc v White is now the essential starting point for occupational schemes. The creditor in that case had a large unsatisfied judgment and the debtor had a right to benefits under an occupational pension scheme. The creditor's tactic was straightforward: apply to the court to exercise its power to grant injunctions under section 37 of the Senior Courts Act 1981 to order the debtor to exercise his scheme rights, draw down the pension money into a bank account in his own name, and thereby create a pot of cash available for enforcement.

The Court of Appeal, however, said no. Not because it was squeamish about debtors paying creditors, but because section 91(2) of the Pensions Act 1995 is drafted to stop courts from making orders whose effect is to restrain the member from receiving the occupational pension. Snowden LJ rejected as artificial the argument that the assets lose their protection as pensions after they are paid into the debtor's account. The court must take a realistic, purposive view: if the order is part of a pre-planned sequence designed to make the pension available to the creditor, that is precisely what section 91(2) is meant to prevent.

So, if your research discloses that the debtor's pension rights are in an occupational pension scheme caught by section 91, *Manolete* confirms that there is no prospect of enforcing against those rights by requiring the pension assets to be drawn down first.

The latched door: personal pensions and the TPDO trap

Personal pensions, however, remain a viable target for the enforcement of judgment debts. The modern starting point remains *Blight v Brewster* [2012] 1 WLR 2841, which (in appropriate cases) permits the court to use its section 37 powers to compel a judgment debtor to take steps to draw down a personal pension lump sum, turning pension rights into cash.

But personal pensions come with a trap that often catches out non-specialists. Together with the court's section 37 powers, the remedy which is most commonly used to enforce against pension assets is the Third Party Debt Order pursuant to CPR 72 (**TPDO**): that enables the court to order a third party to pay to the judgment creditor the amount of any *"debt due or accruing due"* to the judgment debtor from the

third party. However, the problem with the TPDO is that the figure on the debtor's pension statement is not necessarily a "*debt due*" from the third party pension provider to the debtor. Many personal pensions are investment wrappers; and until the member crystallises their benefits and the provider is actually obliged to pay money out to them, there may be nothing for the TPDO to intercept.

This is where Zubarev v Singh comes into play.

Zubarev v Singh: the procedural reality check

Zubarev v Singh involved applications against personal pensions, including interim TPDOs and section 37 injunctive relief. Three points from the case are relevant to the judgment creditor's enforcement strategy.

1. No "Manolete by analogy" for personal pensions

It was common ground in *Zubarev* that the benefits in question were held in personal, not occupational, pensions, so that section 91 had no direct application. The debtor argued, in effect, that the court should treat personal pensions analogously, applying the same protective policy. The court rejected that argument: there were material differences between occupational and personal pensions; Parliament could have extended section 91 to personal pensions, but it chose not to do so; and it would not be right for the Court to incorporate that restriction by way of judicial legislation.

So, for judgment creditors, personal pension benefits remain, in principle, available for enforcement purposes.

2. A TPDO is not a placeholder for money you hope will exist later

The Court emphasised orthodox TPDO principles: you can only obtain what the debtor could immediately and effectually sue for, and a judgment creditor cannot use the TPDO procedure to put itself in a better position than the debtor. If the pension provider is holding an invested fund and no sum is currently payable under the pension scheme provisions, there may be no "debt due or accruing due" at all, and a final TPDO cannot be made.

This is the practical point that matters: you cannot obtain a TPDO against a pension **valuation:** you can only intercept a **debt**.

3. Treat section 37 as the primary order; TPDO comes later (if at all)

The most valuable guidance in *Zubarev* is procedural. The judge declined to extend CPR 72 to permit interim TPDOs where no debt existed when the interim order was made. Instead, the court characterised the section 37 order as, in reality, the primary relief. The creditor should apply under section 37 first to compel the necessary instructions to draw down the benefits within the rules of the pension arrangement; and if, and only if, a debt is thereby crystallised, the creditor should then seek a TPDO (assuming such an order is necessary: hopefully by then, the debtor will have seen the writing on the wall).

The judgment even points towards a more efficient practice in this respect: seek section 37 relief on an interim basis that invites the provider to exercise its powers (or show cause why fiduciary or practical constraints prevent compliance), rather than trying to bolt a TPDO onto the same hearing as if it were a procedural formality.

The steps a creditor should take

From these cases come the following steps that a judgment creditor should take when seeking to enforce against pension assets:

1. Identify the pension type early. A "pension" is not an asset class; it is a fork in the road. If the pension rights are under an occupational pension scheme, *Manolete* shuts down forced drawdown as a route to execution. By contrast, if the rights are under a personal pension scheme, *Zubarev* keeps the door open.

2. Match the procedure to the reality. If there is no presently payable debt, lead with section 37, not CPR 72.

3. Expect to expend time and effort. *Zubarev* shows how messy the mechanics of enforcement can be: if the pension assets are held under trust, there may be fiduciary considerations preventing the trustee provider from disinvesting the pension funds for the benefit of the judgment creditor; and termination and tax deductions may need to occur before any net sum is realised. Those details may decide whether and when a "*debt*" exists for TPDO purposes and what the final sum available for enforcement will be.

4.Do not be speculative. The CPR 72 language and the court's approach in *Zubarev* are hostile to applications made in the hope that there may be a valuable pension somewhere amongst the debtor's assets. If you cannot properly identify a debt due or accruing due, a TPDO is not the appropriate tool.

Conclusion

Pensions still sit alongside property as the judgment debtor's 'big ticket' assets, but they now split into two different enforcement worlds. *Manolete* has largely shut the door on forcing drawdown from occupational schemes as a staging post for execution. *Zubarev* keeps the personal pension door open but insists on procedural honesty: turn rights into money first, then enforce against the money. If you try to enforce against a mere pensions promise, you will only end up throwing good money after bad.

Paul Newman KC, Barrister, Wilberforce Chambers

How to Prepare for Mediation as Counsel: Twelve Terrific Tips

Mediation is now a routine component of the litigation game. In Churchill v Merthyr Tydfil County Borough Council[1] the court changed the traditional litigation rules, leading to a dramatic increase in lawyers encouraging mediation, the court mandating it[2] and hefty costs sanctions for those who refuse to play along.[3]

By Laura Tweedy, Mediator and Barrister, Gatehouse Chambers and The Property Mediators

Barristers have a key role in the litigation arena but in mediation they previously tended to sit on the bench. That is changing, with those who want to remain in the premier league seeking clarity on best practice. They recognise that preparation can decisively shape outcomes—not through exhaustive forensic analysis and advocacy, but by equipping clients to negotiate with clarity, focus, and confidence.

This article offers a practical framework for counsel's mediation preparation.

1. Believe in the Mediation Process

Mediation works. The **2025 CEDR Mediation Audit** reports that **87% of cases settle**, with **70% settling on the day and a further 17% shortly afterwards**[4]. This is not merely reassuring for clients; it should also recalibrate counsel's mindset.

Confidence in the likelihood of settlement:

- improves client engagement,
- encourages flexibility, and
- supports creative problem-solving throughout the day.

Even reluctant parties settle. In *DKH Retail v City Football Group Ltd*[5] the court ordered the parties to mediate despite objections that the dispute required judicial determination; they notified the court of settlement just weeks later.[6]

The mediation process itself – not pre-existing goodwill – is part of what facilitates settlement. Despite this parties are frequently frustrated with the process and hearing messages they don't like – that is just part of it, not a reason to give up.

2. From Fear to Freedom

Many barristers approach mediation defensively. This is often driven by a quiet anxiety: fear of being challenged, undermined, or exposed in front of the client. That anxiety is misplaced. Mediation is not a disguised courtroom. The mediator is not there to test counsel's legal advice or assess the merits. Once this is properly understood, mediation becomes liberating rather than threatening. The shift is from:

- performance, to problem-solving,
- advocacy, to exercising judgment,
- legal perfection, to practical outcomes.

Without this shift, preparation risks becoming an exercise in drafting mediation submissions of little value. Embracing it allows counsel to do what they are best at: guiding clients through risk, uncertainty and decision-making using clear language. It reflects why many of us were drawn to the profession in the first place – to genuinely help people.

3. Be Clear About the Mediator's Role

No one needs to persuade the mediator. In a facilitative mediation the mediator does not decide the dispute, express a view on the merits, or release information without permission. While well understood, its practical implications for counsel are often overlooked. Confidentiality with the mediator enables true candour - which is the catalyst for progress - even if the lack of poker face feels unfamiliar.

Counsel's skills in rapid analysis and independent advice are most effective in mediation when used collaboratively with the mediator, focusing not on the legal points but on what is needed to release their client from the dispute.

Understanding the nature of the mediator's role enables counsel to:

- have frank early discussions with the mediator,
- identify what genuinely matters to the client and signpost that to the mediator,
- help clarify where movement seems likely.

Settlement often stalls because parties or lawyers adopt a zero-sum view of the dispute. Part of the mediator's value lies in helping the parties identify other important factors beyond legal rights, frequently overlooked in litigation, such as:

- reputation,
- confidentiality,
- timing and structure of payment,
- future commercial relationships,
- business time,
- what is won by no longer being in the dispute,
- certainty,
- explanations or apologies.

These result in outcomes a court cannot order, but which often matter more than the pleaded case. Once identified, they can transform an apparently impossible negotiation into a workable resolution. Knowing these points in advance, or adapting to them as the mediation progresses, allows effective preparation between counsel and the client.

Mediators use a range of techniques to facilitate resolution, including, building rapport, careful listening so parties are heard, questioning and reflecting back to see it from a different angle and reality testing, directed towards helping parties assess what might happen in court against a potential offer.

Some lawyers are uncomfortable with the mediator taking the lead, not realising why the mediator is asking certain questions. But that concern is not only misplaced, it can actively undermine the process. In these circumstances useful preparation will involve developing a better understanding of what the mediator is trying to do and how to explain that to the others.

4. Use the Mediator to Maximum Advantage—Before the Mediation Day

Points to consider when preparing to use the mediator to maximum effect:

- Ask whether the mediator offers pre-mediation meetings. The more groundwork done in advance, the better.
- Request and collaborate on a clear timetable for getting to the mediation, including when documents will be exchanged and what those will be. Clarity breeds calm.
- Agree the format:
  - Do not assume lengthy position statements are required. Confidential, resolution-focused statements are often more effective. The best option might be what the Property Mediators use: confidential questionnaires.
  - Do not assume that a traditional opening joint session will take place (and thereby the particular type of preparation required for that). Early joint openings often inflame rather than assist, whereas later focused joint sessions can be powerful once trust develops. Talk to the mediator about this.
- Ask what documents the mediator actually needs – large bundles take work and are rarely helpful

5. Maximising the mediation

A mediation that does not settle is not wasted.

It may still provide:

- insight into the other side's risk appetite,
- answers to key factual questions,
- a first meeting with future witnesses,
- a clearer sense of trial dynamics.

Time between negotiations can also be used productively: refining witness evidence, trial strategy, or the solicitor-client relationship.

Understanding this allows counsel to prepare in advance, ensuring that time is used to best effect and that valuable information is obtained.

6. Ensure Your Client Has Genuine Authority to Settle

Having the decision maker in the room is critical, yet often difficult to achieve. Counsel should try to get the decision maker there. Where only delegated authority is available, it is essential to establish its limits in advance, including whether further approval will be required, whether telephone or virtual attendance is possible, and whether there are any time constraints.

Remote participation by the principal can be a double-edged sword. While it may allow swift instructions to be taken, it can also be disruptive if the decision-maker has not lived the mediation process so struggles to appreciate how positions have evolved. This risk should be anticipated and managed carefully.

7. Prepare Your Client Thoroughly

Thorough preparation is essential (and something to factor in fee quotes!) Counsel should help clients explore their chance of success at court, of course, but more importantly why they are in the dispute; what is really underlying this. Consider two preparatory meetings—one well in advance and one shortly before the mediation—to ensure genuine readiness.

It should ideally also cover:

- what matters beyond legal rights;
- a realistic assessment of the Best Alternative to a Negotiated Agreement, Worst Alternative to a Negotiated Agreement and Realistic Alternative to a Negotiated Agreement – this includes costs including the

irrecoverable, the emotional impact of the dispute, the reality of giving evidence, the time to trial, judgment and appeals, enforcement risk, practical impact.

Clients should be warned about:

- the high level of emotion in every mediation,
- never knowing what is going on in the other room,
- the inevitable low point,
- long periods of waiting.

It is equally important to explain counsel's role in mediation, this allows the barrister to assist the settlement without the client worrying that the barrister might just as conciliatory in court!

8. Prepare Your Instructing Solicitor

Solicitors can do substantial groundwork including:

- circulating boilerplate settlement clauses early,
- preparing cost figures to date and to trial, and critically
- gathering any objective material such as market rents or comparables, so that negotiations are informed by evidence rather than assumption.

9. Prepare Yourself for the Mediation Day

Practicalities matter:

- food,
- chargers,
- comfortable clothing,
- clarity on time constraints,
- a way to destress.

Counsel should anticipate their own emotional responses. It is common for clients to be ready to settle when lawyers hesitate. New information may emerge that cuts across earlier advice. These moments are part of the process, not a failure of preparation.

10. Understand Your Role on the Day

This can be the most counterintuitive shift for many barristers. In mediation court advocacy, arguing the law and being the client's spokesperson is unhelpful. Although good drafting remains beneficial!

Counsel can also be brilliant at:

- generating creative settlement options
- considering risk, value, and potential outcomes
- helping assist with client's emotional responses
- shifting dialogue to move negotiations forward
- letting the mediator speak directly with the client, then doing work with the client when the mediator leaves the room.

11. Be Open to a "Part Two"

Not all mediations need to run into the night, and many mediations now pause and reconvene, as expectations around work-life balance evolve. Where there is progress but not completion, a follow-up session can produce better outcomes. Decision-making improves with rest and mediation can proceed in phases.

12. The who, what, where and when

Although addressed last, these are in practice the first questions to consider when deciding whether to mediate:

- **Who** - mediators vary widely in style, from light-touch facilitation to more interventionist approaches. Subject-matter expertise may or may not matter. Finding someone good, who suits the dispute, does.
- **What** - be clear about the objective. Settlement of the pleaded dispute may not be the only — or primary — goal.
- **Where** - venue affects dynamics. Online or in person? Neutral ground or addressing perceived home advantage?
- **When** - timing is under increasing judicial scrutiny:
  - Early or repeated refusal can attract costs sanctions *(Smith & Ors v Campbell & Ors*[7]*)*.
  - Delay may be reasonable where disclosure is incomplete *(Belson v Belson*[8] (despite 15 attempts to induce mediation); Re Grenfell Tower Litigation[9]).
  - But delaying past the court's order for the date can be unreasonable *(Appiah v Leeds City Council)*[10].

Conclusion

Statistically, mediation is likely to work, and its increased use will reduce trial work. Counsel can nevertheless continue to win in the litigation game by adapting to this new phase of play, drawing on existing skills with a recalibrated mindset and thorough preparation.

Laura Tweedy, full-time mediator and conflict resolution specialist

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[1] [2023] EWCA Civ 1416
[2] Ivey v Lythgoe and others [2025] EWHC 2325 (Ch); Brooke Homes v Portfolio Property Partners [2025] EWHC 1305 (Ch); Sky v Riverstone et al [2025] EWHC 1720 (Comm).
[3] Costs sanctions imposed for failure to mediate in: Northamber Plc v Genee World Ltd [2024] EWCA Civ 428; Conway v Conway [2024] EW Misc 19 (CC); Payone Gbmh v Logo [2024] EWHC 981 (KB) and Cabo Concepts Ltd v MGA Entertainment (UK) Ltd [2025] 7 WLUK 21; Ellis v Ellis [2025] EWHC 2609 (Ch); Grijns v Grijns, [2025] EWHC 2853 (Ch)); Fernandez v Fernande [2025] EWHC 2530 (Ch). Not in Gable Insurance v Dewsall [2025] EWHC 3399 (Ch); Alrubie v Chelsea FC and Granovskaya [2025] EWHC 541 (Comm)
[4] https://learn.cedr.com/hubfs/CEDR%20Mediation%20Audit%202025.pdf?hsLang=en
[5] [2024] EWHC 3231 (Ch)
[6] This reflects my personal experience of parties openly expressing to me that they are "paying lip service" to the process, ending the day with a settlement.
[7] [2026] EWHC 144
[8] [2025] EWHC 2989 (Ch)
[9] [2025] EWHC 3276 (KB)
[10] [2025] EWHC 1537 (KB)

AI Hallucinations and the Discipline of Legal Authority

In 2023, if you had asked a room of lawyers what an "AI hallucination" was, many would have been unsure. That has changed quickly, particularly following the observations of Dame Victoria Sharp in the combined High Court cases of Ayinde v London Borough of Haringey and Al-Haroun v Qatar National Bank [2025] EWHC 1383 (Admin).

By Matthew Lee, Barrister, Doughty Street

Those cases brought into focus a tension with how lawyers are trained to work. Generative AI systems can produce legal-sounding text, complete with case names, citations and confident statements of principle. Sometimes, however, the material is not merely wrong but invented. Because it is plausible, it can pass unnoticed unless every authority is checked. That is not an argument against using AI, but a reminder of a basic discipline: the authority must exist and it must say what you claim it says.

What Do We Mean by "Hallucination"?

The term is now used with enough regularity to appear in formal judicial guidance. The updated *Artificial Intelligence (AI) Guidance for Judicial Office Holders*[1] defines it as follows:

"AI hallucinations are incorrect or misleading results that AI models generate. These errors can be caused by a variety of factors, including insufficient training data, the model's statistical nature, incorrect assumptions made by the model, or biases in the data used to train the model"

Dame Victoria Sharp captured both the opportunity and the risk in *The Mayflower Lecture 2025*:

"Generative AI, designed as it is to produce coherent text rather than the "right" answer, if asked to generate a legal argument, can produce "hallucinations." These are fake cases, or fake citations from fake cases or even fake quotations from real cases… The risk of injustice and misinformation filtering into the legal system is nonetheless real, but at least such problems can be spotted, and those responsible for misusing technology can be held to account by the courts and professional regulators."[2] This calm seriousness is echoed in *Ayinde*, where the Divisional Court emphasised not only individual responsibility but the need for leadership, training and regulation across the profession.

Where Are We Now?

I try to be careful not to overclaim and AI use is certainly not confirmed in all cases where it is suspected. The reported cases vary, the context is often incomplete, and court users are not always consistently described. With that caveat, my current working count of UK decisions involving hallucinated material stands at 38, which I treat as a minimum rather than a definitive figure.

Responsibility is mixed. On what I have been able to trace so far, 21 cases involved litigants in person, 10 involved lawyers, and the remainder involved other forms of representation. The problem is also spread across jurisdictions, from the High Court and Court of Appeal to tribunals of many kinds. That breadth suggests the issue is not confined to one corner of the system, and that pressures on written submissions and access to competent advice matter.

Having read hundreds of cases from outside the UK, I am confident there is no single explanation for why hallucinated material reaches the court. Sometimes it reflects a genuine misunderstanding of what these tools can do. Sometimes it is poor supervision or over-reliance on unchecked drafts. Sometimes it is the pressure to produce something that looks authoritative. At the most serious end, there may be deliberate attempts to mislead. Increasingly, courts want to know not only that hallucinated material is present, but why it appeared in that particular case.

Is Technology Alone Enough?

I am cautious when I hear confident claims that this is an easy technical problem with a technical fix. Tools that check citations against databases may help with obvious fabrications and I would welcome anything that makes verification quicker. But hallucinations are tied to how large language models generate plausible text rather than verified truth and the most troubling examples are often subtle, coherent and superficially sound. For that reason, I find it helpful to distinguish between different types of hallucinations that seem most common in the case law internationally.

The 8 Common Hallucinations in Legal Work

At the start of my research, I began grouping hallucinations into eight types.[3] I may revisit these categories over time, but for now they provide a useful way of explaining why the problem is not easily solved.
The first type is a fabricated case and citation, where both the parties and the reference are invented. This is often the easiest to spot. The second involves a wrong case name paired with a real citation, so that checking the reference leads to an existing decision but not the one claimed. The third is the reverse: a real case name accompanied by the wrong citation.

The fourth type consists of conflated authorities, where elements of multiple real cases are merged into a single, plausible but inaccurate source. The fifth involves a correct statement of law supported by an invented authority. The principle may be sound, but the case relied upon does not exist.

The sixth type is a real case with misstated facts or a distorted ratio. The seventh involves a misleading paraphrase of secondary material, such as textbooks, articles, or headnotes, where the tone of scholarship is retained but the substance is altered. The eighth arises where a real citation is used to smuggle in a false one, for example where a legitimate article or case is cited even though it already contains an earlier hallucinated authority.

The earlier categories are generally easier to detect. The later ones are harder, because the surface appears reliable while the substance quietly shifts. Of these, it is Types 6 to 8 which present difficulties that are unlikely to be addressed through current technical measures alone.
As an aside, a reader of my blog recently informed me that ChatGPT has begun referring to these categories as "Lee's types of hallucinations". I hope that doesn't catch on, but it struck me as an oddly circular development, not least because the phrasing leaves open whether the hallucinations are being analysed or attributed to the author, which neatly captures how AI-generated language can misstate and confuse at the same time.

The Risk of Contamination

The deeper concern arises when hallucinations stop being isolated errors and become part of the wider information environment. A fabricated citation explained in a judgment can, paradoxically, gain durability once it appears in an official source that is scraped, indexed and reused. Similar risks arise when invented authorities enter academic or professional writing and are repeated without checking. Over time, the problem is not a single falsehood, but the erosion of traceable authority.

Expert evidence deserves particular care. *Kohls v Ellison*[4], a case from the United States, is a salutary reminder that expertise does not immunise anyone against fluent but unverified drafting. The below is taken from the Judgment. The Expert:

"…included citations to two non-existent academic articles and incorrectly cited the authors of a third….admits that he used GPT-4o to assist in drafting…failed to discern that GPT-4o generated fake citations to academic articles…. The irony. [expert] a credentialed expert on the dangers of AI and misinformation, has fallen victim to the siren call of relying too heavily on AI…"

This case provides a stark reminder to people like myself and others who believe they are fairly proficient in the use or certain AI tools and the risks involved. These tools can be highly persuasive, and the hallucinations subtle, even to those who understand the risks. The message is clear, if you use AI at any level, you must carefully check the output.

Looking Ahead

When I began tracking these issues, I assumed they would fade quickly, either through better tools or settled professional habits. There is a strong argument that we are in a transitional phase and the Master of the Rolls, Sir Geoffrey Vos, has recently articulated that view clearly in part of his response to an interesting question about How can and should the fundamentals of modern justice be delivered more quickly, more efficiently and at more proportionate cost, but still justly in the forthcoming generation:

"…One of the problems with providing a definitive answer to this question is that technology is moving very fast, and the thought leaders in our society have been struggling to keep up with its capabilities. If we were to devise solutions based on today's AI capabilities, those solutions would be outdated in months…

The first assumption is and must be that AI will be far more capable than many can now imagine. It is pointless to dwell upon the hallucinations of today, when we know that such hallucinations will very likely soon be things of the past. We need, as I have said, to consider the more fundamental questions of how justice should be delivered when AI is able to decide cases, both civil and criminal, as or more reliably than humans and certainly far more cheaply and quickly…"[5]

I take that view seriously and I hope it proves to be right. If hallucinations do become a thing of the past, a significant concern shared by many, including myself, would fall away. In particular, it would reduce the risk of our legal canon becoming polluted as the use of AI increases across the profession. I also agree that the pace of technological development is rapid. The tools I use now may soon feel antiquated.

At the same time, I find myself quietly reflecting on an important counterpoint. The risk of hallucination does not arise accidentally. It seems to flow from the core design goal of many of these systems, which is to generate coherent and persuasive language rather than to guarantee truth. In law, the standard is necessarily stricter than being usually right. Authority must exist, be correctly identified and genuinely support the proposition advanced. Even a low residual error rate becomes problematic where a single undetected mistake can determine the outcome of a case.

This is not an argument against progress, nor against optimism about what may come next. It is simply a reminder that legal systems are uniquely sensitive to error, and that even small mistakes can have lasting effects. As we move through this transitional period, the challenge is not only to anticipate what AI may soon be capable of doing, but also to remain attentive to the standards that law already demands. After all, the legal documents of today are likely to shape the AI models of the future.

Matthew Lee, Barrister, Doughty Street

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[1] https://www.judiciary.uk/wp-content/uploads/2025/10/Artificial-Intelligence-AI-Guidance-for-Judicial-Office-Holders-2.pdf
[2] https://www.judiciary.uk/wp-content/uploads/2025/12/THE-MAYFLOWER-LECTURE-2025.pdf
[3] https://naturalandartificiallaw.com/ai-hallucinations-in-case-law/
[4] https://naturalandartificiallaw.com/ai-in-expert-evidence-legal/
[5] Speech by The Master of the Rolls: Justice for all, justice for the accused, February 5, 2026, https://www.judiciary.uk/speech-by-the-master-of-the-rolls-justice-for-all-justice-for-the-accused/

The Rule of Law for the modern age

On 13 January 2026, the Government launched its controversial TikTok page 'SecureBordersUK' depicting the deportation and/or removal of migrants.[1] At the same time, the Attorney General has established a Youth Ambassador's programme for young people to become champions of the Rule of Law within their communities.[2] Then, in the panel discussion on 'Why Trust Matters?' on 29 January 2026, Lord Reed observed that social media and AI presented challenges for the Supreme Court to be better understood by the public. All these events reveal a theme; connection with the public needs a new approach for the modern age and the Rule of Law is no different.

By Saara Idelbi, Barrister at 39 Essex Chambers

The need for this connection could not be better exemplified than by the House of Lords' Select Committee on the Constitution's report *'The Rule of Law: holding the line against tyranny and anarchy'*, which notes the declining confidence, and the damage to trust, in the Rule of Law that has been exacerbated by social media.

Lord Reed had voiced a tension that I have been mulling over for some time: social media derives its success from emotional hacking when the courts are not – or at least not meant to be – an emotions business. The latter prizes rationality, reasoning, precision and accuracy. The former rewards attention capture, turbulence and virality – never before has there been a way to disseminate information at such speed with unfathomable reach.

How can the emotional rubric of social media be countered to improve trust in public institutions and, importantly, the Rule of Law?

The Rule of Law in Legalistic Terms: Speaking Past the Public

The Rule of Law as lawyers know it was, arguably, first articulated in an age of limited literacy and equality. It remains a matter of curious amusement to me that the Magna Carta is held in such high esteem in the anti-establishment discourse when – on the text and historical context – the agreement concerned the rights of landed gentry vis-à-vis the king with no definition of the 'free men' (a modern contract lawyer would surely roll their eyes).

The Rule of Law has been explored through the age of print media, the distribution of which accelerated over 500 years; a leisurely stroll compared to social media's growth since the 1990s.

The rise of social media reflects the technological advance and societal shift of the modern age. The baseline of education and minimum standards of living have changed. Information has become increasingly available, and with it the expectation of immediacy.

Nevertheless, despite the Plain Language Movement ushered in by the Woolf reforms, the Rule of Law debate typically remains in language inaccessible to most people.[3] This lack of accessibility creates another tension. The Rule of Law exists for all (and all have a role to play in upholding it), but its articulation excludes many from the conversation.[4]

And that is if the individual has the time, knowledge, or mental bandwidth to seek it out. The reality of the modern age for many is the cognitive overload of austerity and the rising cost of living. We recognise that preoccupation with meeting survival needs leaves little

room for anything else, not least the defence of a concept that remains the subject of debate among legal scholars.

Most people may understand and support the tenets foundational to the Rule of Law (fairness, equality, accountability, and independent adjudicators). Why then is it a struggle for the institutions of the Rule of Law – for these purposes, I mean the courts – to speak to, and not past, the public?

A Vacuum: Who Speaks for the Judiciary?

The first, most obvious reason is that, beyond the courtroom, the judges cannot speak directly to the public. It would be unkind to lay the blame at the foot of the judiciary for the constitutional convention that prevents them from discussing cases. Nor do I think such convention is wrong.

However, this constitutional convention has left a vacuum that has been readily filled with attacks that pit the judges against the interests of citizens (e.g. memorably in the 'Enemies of the People' front page following the *Miller* judgment).

The 'us' and 'them' culture is perpetuated by:

> (1) Personal attacks on judges (rather than their decisions) by those who should respect the structure of the Rule of Law, such as the politicians or – from another purported truth industry – journalists.
> (2) The lack of access to judges/courts due to austerity's corrosive effect on the parts of the justice system with which the public are most likely to have contact: backlogs in employment tribunal cases,[5] deep cuts to legal aid in family cases,[6] court closures and underfunding of the criminal justice system.[7]
> (3) The law's perceived deference to political institutions, that have developed reputations for failing to serve the public well (police mishandling of cases, children's services' failure to save toddlers, hospital discharge of patients in need), without commensurate deference to matters styled to be of public important (Brexit or immigration).

The law that is applied can be changed by Parliament, and the judiciary applies the law as it is (or best interpreted to be) but, the average non-lawyer may be unable to distinguish application from the applicant. What is left is a residual deep emotional belief that the system does not have their back. They are alone. And loneliness can be devastating for them and the Rule of Law.

Because the modern age compounds the loneliness. Social media is fertile ground for distraction by short-form, emotive narratives by offering the appearance of solidarity (in shared outrage or tempting false comfort) whilst segregating people into algorithmically curated echo chambers. The loneliness is experienced as distrust and disconnection from a real community, occluded in belonging to a digital tribe. That makes it harder to address and more corrosive to the collective trust on which the Rule of Law depends.

The Attention Economy and the Structural Mismatch

Herein lies the problem.

I often tell non-lawyers that accompany me to court that law is not a spectator sport. The machinery of law is slow. Is dry. Is particular. It needs the detail.

Yes, those who appear in court largely prefer the detail being considered. But it makes for bad entertainment.

Before you rebuke me with the array of legal TV dramas, you must concede that the hours reading, drafting, preparing, and persuading are condensed into a pleasing montage or a momentary earth-shattering cross-examination.

Given that AI summation tools insist that 20 pages is a long document, a judgment capable of reaching 100 pages (sometimes more) is unlikely to grip someone on their way home from work. Short form media is just more appealing.

The speed of information distribution cycles is structurally mismatched. A judgment that took months to produce can be mischaracterised in a 60-second video. The memory of the latter can never truly be overridden by a correction, buried in an unengaging corner of the publisher's platform (if at all).

Whilst the Supreme Court's press summaries must be applauded for making judgments more accessible, the infrastructure is also mismatched. A judgment (or press summary) that appears on the judiciary.uk or Supreme Court site requires the motivation to search for and find it, read it and digest it.

The age of information has moved past the old 'noticeboard' style of the early internet. One cannot counter emotional hijacking with a sign. How then can one then counter high emotional intensity for a slow and deliberate machine that is meant to uphold the Rule of Law?

Meeting People Where They Are Without Losing What Matters

What then? A 'SecureBordersUK' TikTok approach? Absolutely not! Such sacrifices rationality that risks damaging the Rule of Law in a different way. Judges on TikTok are not likely to be the answer.

But, along with the Attorney General's ambassador's programme, there is a kernel of legitimacy. We as a profession, as an industry, need to be proactive, not reactive. We need to meet people where they are; not expect them to come to defend the Rule of Law.

Firstly, though obvious, the Rule of Law for the modern age requires investment. A functioning system speaks for itself to those who are in contact with it.

Secondly, the Rule of Law needs better publicity from the courts and its officers (us).

How?

Have we forgotten?

The stories of law are tales of emotion. *'Mr Bates v the Post Office'* exemplifies the power of stories in generating interest in the Rule of Law with the increased reporting on the Post Office Inquiry.

Rather than television programmes on the life of a judge, the public needs the tales of everyday life that are relatable and resolved by the courts in a manner built for them.

Law students are telling the tales of the cases they are studying on social media in diverse and entertaining ways. There are some lawyers on the visual social media platforms. There is scope for expansion. Exposure may be affected by the algorithms but, the popularity of politicians' pages and the rise of the 'intellectual influencer'[8] confirms that the public want to know more.

Perhaps we need the press summary reloaded; videos/short-form media that engage attention by telling the real stories and communicating judgments, accessibly.

Does that not denigrate the qualities that make the Rule of Law worth defending (reason, accuracy, impartiality)? I argue not:

> (i) If a press summary does not dilute the accuracy of a judgment, how can it be said that video or short form would do? Many had similar complaints about blogs before they became prolific among practitioners to share information.
> (ii) Speed of information is essential to counter the virality of social media, the detail can follow. Timing does not alter the truth of the decision. Ultimately refusing to engage with the shift in information dissemination has left the Rule of Law vulnerable. Shunning short form media deepens the perceived divide between 'us' and 'them'.
> (iii) A truth unheard offers the Rule of Law no greater defence than a lie.

Advocates are taught to adapt for your judge, your jury. Connection is about meeting the other person's style of communication and reaching understanding. The Rule of Law in the modern age needs to speak with its community in the ways the latter does. After all, if one of the pillars of the Rule of Law is that all are equal before it;

then surely it should be equally understood by all, particularly where the Rule of Law needs all to walk alongside and defend it.

Saara Idelbi, Barrister at 39 Essex Chambers

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[1] *https://www.independent.co.uk/bulletin/news/home-office-tik-tok-secure-borders-b2899460.html.*

[2] *https://www.gov.uk/government/publications/attorney-generals-youth-ambassadors-programme.*

[3] *Evidence to the HOL select committee from Professor Adam Tomkins.*

[4] *Evidence to HOL select committee from the Constitution Society, justice, Dr Mark Ryan, Zana Jeppenlatz, Institute for Constitutional and Democratic Research.*

[5] *https://data.justice.gov.uk/courts/tribunals.*

[6] *https://www.barcouncil.org.uk/static/756d3310-cec8-456e-bfcb6bf75e7cb89b/System-overload-a-report-on-family-legal-aid.pdf.*

[7] *https://www.gov.uk/government/publications/independent-review-of-the-criminal-courts-part-2.*

[8] *https://secondglancewrites.substack.com/p/the-rise-of-the-intellectual-influencer.*

Killing by Algorithm: Can the Law Keep Up?

A Quiet but Profound Transformation:

Warfare is undergoing a transformation that is neither heralded by diplomatic declarations nor constrained by traditional military doctrine. Instead, it is driven by advances in artificial intelligence and machine autonomy. Autonomous weapon systems (AWS), capable of selecting and engaging targets without direct human intervention, are no longer speculative constructs. They are being researched, prototyped, and in some cases deployed in semi-autonomous forms.

By Tahir Khan, Barrister, The Barrister Group

For a state such as the United Kingdom, which places significant emphasis on the rule of law, democratic accountability, and the ethical conduct of hostilities, the rise of autonomous lethality presents a constitutional, legal, and moral challenge. The central question is stark: *can the decision to take human life ever be lawfully or ethically delegated to a machine?*

For legal professionals, this question implicates foundational legal concepts: intention, foreseeability, responsibility, and the limits of legal doctrine when confronted with technologies that do not fit neatly within existing frameworks.

Defining Autonomy: *The Problem of Legal Precision:*

A major impediment to meaningful regulation is the absence of a settled legal definition of "autonomous weapon system." International law, including the Geneva Conventions and Additional Protocols, does not define autonomy. States diverge significantly in their interpretations, and the UK's own policy documents avoid strict definitional boundaries.

Systems are often described along a continuum:

- Human-in-the-loop: Human authorisation is required for each engagement.
- Human-on-the-loop: The system operates autonomously but remains subject to human monitoring and override.
- Human-out-of-the-loop: The system selects and engages targets independently.

As human involvement diminishes, legal and ethical concerns intensify. Without definitional clarity, it becomes difficult to determine:

- who bears responsibility for unlawful harm,
- whether harm was foreseeable,
- whether existing legal norms can be meaningfully applied.

Ambiguity in this context is not neutral; it creates space for legal evasion and operational risk.

International Humanitarian Law: *Human Judgement at the Core:*

International humanitarian law (IHL) is built upon principles that presuppose human judgment:

- Distinction between combatants and civilians,
- Proportionality in balancing civilian harm against military advantage,
- Military necessity,
- Precautions in attack.

These principles require evaluative reasoning, contextual understanding, and moral discernment. They are not reducible to binary calculations or probabilistic modelling.

The Martens Clause: *A Normative Backstop*

The *Martens Clause*, originating in the 1899 Hague Convention and reaffirmed in Additional Protocol I, provides that in cases not covered by existing treaties, civilians and combatants remain under the protection of the "principles of humanity and the dictates of public conscience."

This clause has been interpreted by international courts and scholars as a normative safeguard against technological developments that outpace treaty law. It serves three functions:

1. A moral constraint: reminding states that legality is not exhausted by technical compliance.
2. A gap-filling principle: ensuring protection even where treaty law is silent.
3. A dynamic standard: allowing public conscience to evolve with societal values.

Autonomous weapons, which lack empathy, moral hesitation, or the capacity to interpret human behaviour contextually, sit uneasily with a clause that centres humanity and conscience.

International Human Rights Law: *Article 2 ECHR and the Right to Life*

The European Convention on Human Rights, incorporated domestically through the Human Rights Act 1998, imposes stringent obligations regarding the right to life under Article 2. These obligations apply extraterritorially where the UK exercises jurisdiction, including in overseas military operations.

Article 2 imposes:

1. Substantive obligations

The state must not arbitrarily deprive life. Lethal force must be "absolutely necessary" and strictly proportionate.

2. Procedural obligations

The state must conduct an effective investigation into any potentially unlawful death. This requires:

- independence,
- promptness,
- transparency,
- the ability to identify individual responsibility.

3. Operational (positive) obligations

The state must plan and control military operations to minimise the risk to life. The Strasbourg Court has repeatedly emphasised the need for:

- adequate training,
- clear rules of engagement,
- effective command structures,
- foreseeability of harm.

Implications for Autonomous Systems

Autonomous weapons challenge each of these obligations

- Substantive: Can a machine's decision ever satisfy the "absolute necessity" test?
- Procedural: How can investigators scrutinise a machine-learning algorithm that is opaque even to its designers?
  Operational: How can commanders foresee the behaviour of systems that adapt dynamically to data inputs?

The jurisprudence of cases such as McCann v United Kingdom, Al-Skeini, and Gürtekin emphasises human judgment, accountability, and foreseeability, qualities that autonomous systems do not inherently possess.

The United Kingdom's Legal and Policy Position

The UK has resisted calls for a pre-emptive international ban on lethal autonomous weapons. Instead, it emphasises:

- compliance with existing IHL,
- the concept of "meaningful human control",
- the assertion that fully autonomous weapons are not currently in development.

MoD Policy: *Ambition Without Precision*

The Ministry of Defence's policy documents, including the *Defence AI Strategy and Joint Doctrine Publication 0-30.2(JDP0-30.2)*, assert that:

- autonomous systems will always operate under human oversight,
- the UK will not delegate lethal decision-making to machines,
- all systems will comply with IHL.

However, these assurances raise several issues:

1. "Meaningful human control" is undefined in law or policy.
2. Oversight is not the same as control, particularly in high-speed engagements.
3. Procurement pathways increasingly favour systems with adaptive, machine-learning capabilities.
4. Legal reviews under Article *36 of Additional Protocol* I are not publicly disclosed, limiting transparency. From a common law perspective, doctrines of intention, negligence, and reasonableness assume human agency. Delegating lethal decisions to machines strains these doctrines to breaking point.

Accountability and Liability: *The Central Legal Deficit*

If an autonomous system unlawfully kills a civilian, who is responsible?

Potential candidates include:

- the commander who authorised deployment,
- the operator who supervised the system,
- the programmer or manufacturer,
- the state itself.

Each presents difficulty:

- *Command responsibility* requires knowledge and control, both diluted by autonomy.
- *Operator liability* becomes tenuous if the system acts faster than human reaction time.
- *Manufacturer liability* raises complex questions of foreseeability and product defect.
- *State responsibility* may be the only viable route, but it does not satisfy the need for individual accountability in international criminal law.
- For Legal professionals, the prospect of litigating a "black box" algorithm, whose internal decision-making cannot be reconstructed, poses profound evidential challenges.

Ethical Concerns Beyond Legal Doctrine

Even if autonomous weapons could be engineered to comply with IHL, ethical concerns remain:

Dehumanisation of warfare: reducing moral friction in the decision to kill.

- Lowered thresholds for conflict: political leaders may find war more palatable when domestic casualties are minimised.
- Algorithmic bias: systems trained on flawed data may replicate discriminatory patterns.
- Absence of moral restraint: machines cannot refuse unlawful orders or exercise mercy.

These concerns highlight the risk that autonomous warfare may erode long-standing ethical constraints on the use of force.

The Barrister's Dilemma: Law Struggling to Keep Pace

The law evolves incrementally, through precedent and statutory reform. Autonomous warfare challenges this model. Courts are not well-equipped to interrogate complex algorithms, and doctrines grounded in human cognition strain when applied to machine decision-making.

There is a real risk that legal systems will be forced to retroactively legitimise practices that have already become entrenched through technological momentum rather than principled deliberation.

The Case for Regulation

A total prohibition on autonomous weapons is one option, but not the only one. What is clear is that inaction is itself a policy choice, one that risks ceding ethical ground to technological inevitability.

At a minimum, the UK should consider:

- legally binding standards for meaningful human control,
- mandatory transparency and auditability of autonomous systems,
- clear chains of accountability,
- parliamentary oversight of development and deployment,
- public reporting of Article 36 weapons reviews.

As a permanent member of the UN Security Council and a state with a strong legal tradition, the UK is well positioned to lead in shaping global norms.

Conclusion: Safeguarding Humanity in the Use of Force

The decision to take a human life is the gravest power a state can exercise. It requires judgment, responsibility, and moral agency, qualities that machines do not possess.

Autonomous warfare is not merely a technological development; it is a test of our legal and ethical commitments. The United Kingdom must decide whether it will allow automation to erode principles that have long constrained the use of force, or whether it will insist that lethal decisions remain firmly in human hands.

The fact that something can be automated does not mean it should be.

Tahir Khan, Barrister, The Barrister Group

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